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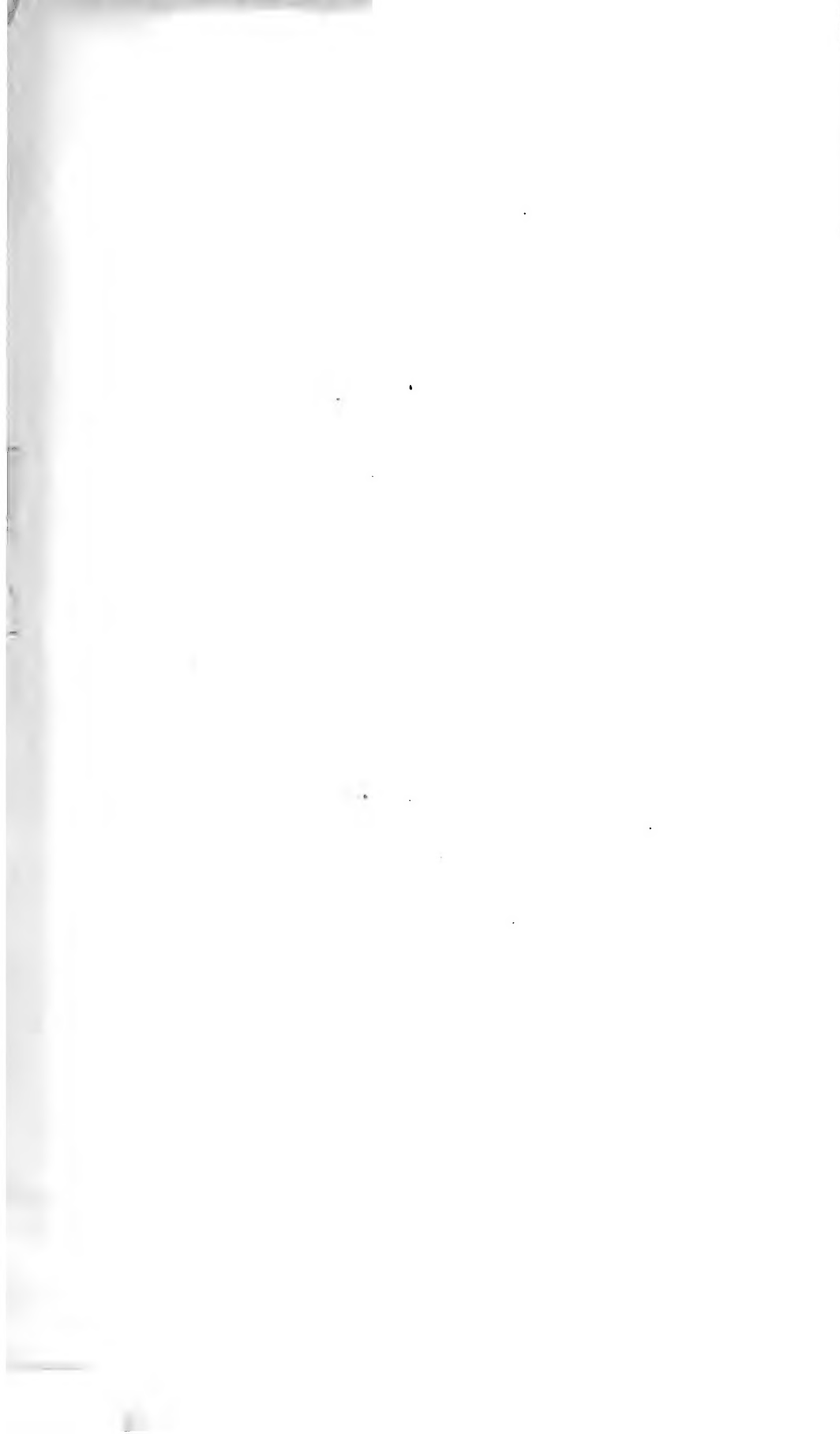






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THE

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# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— "Still attorneyed at your service."—*Shakespeare.*

SATURDAY, MAY 3, 1856.

### THE TREATY OF PEACE.

In the former state of the Law relating to the contents of Newspapers, we should not have been permitted to set forth or descant on the great Treaty of Peace which was announced to both Houses of Parliament on Monday last, the 28th April. It must be acknowledged, however, that we were liberally dealt with by the Government authorities in the construction of the Statutes against the publication of "news or observations on public events." Our humble Journal, as the first Weekly Law Periodical, has often been noticed in Parliament and the Courts of Law on questions relating to publications devoted chiefly to science and literature, but which sometimes animadverted on transactions of a political nature or which affected the community at large.

Indeed, it may be admitted that in stating and commenting upon the various measures of Law Reform (for which purpose the *Legal Observer* was chiefly established) we were frequently dealing with topics not limited to the Profession alone in any of its branches, but importantly affecting the public in general. We believe that there is scarcely any subject in the wide range of newspaper topics so interesting to the majority of Englishmen as the *due administration of Justice* in all its various departments; and this general feeling proves convincingly the high sense of justice which prevails throughout the kingdom. Hence we see a large and prominent space allotted to "Law Reports and Intelligence" in all our daily papers.

We consider also that this more than European Compact, which well-nigh establishes the peace of the whole world, will in

its result not only increase the prosperity of this great Commercial Country throughout all its various classes, (depending as they do on each other,) but largely tend to the advantage of the Legal Profession, for whatever promotes the wealth, and increases the population of a country, must enhance the interests of those whose clients multiply both in number and riches. We trust, indeed, that "a good time is coming," which will re-instate our brethren in that prosperity which they formerly possessed; and that, notwithstanding the ravages which have been perpetrated by hasty and ill-advised changes in the rules of Law and the regulations of professional Practice, an honourable, well-educated, energetic, and intelligent body of men must still continue to conduct the practical business of the Courts, and advise, guide, and aid the suitors in their varied, important, and often complicated affairs.

Although the Treaty of Peace, and its appendant Conventions, have appeared in all the papers, we think our readers will approve of its being permanently recorded in these pages. Every intelligent lawyer, indeed, ought to be acquainted with the several clauses of these remarkable State documents, which we trust will long continue as a great Chapter in the International Law of the Seven Kingdoms,—the rulers of which are parties thereto.

The several articles of the Treaty which more particularly affect the interests of Great Britain are the 11th, 12th, 14th, 15th, 16th, 17th, and 23rd. In addition to which is the following Convention relating to the important subject of *Maritime Law* :—

"That Maritime Law, in time of war, has long been the subject of deplorable disputes;

"That the uncertainty of the Law and of the duties in such a matter, gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts;

"That it is consequently advantageous to establish a uniform doctrine on so important a point;

"The plenipotentiaries, being duly authorised, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn declaration:

"1. Privateering is, and remains, abolished;

"2. The neutral flag covers enemy's goods, with the exception of contraband of war;

"3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;

"4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

"The Governments of the undersigned plenipotentiaries engage to bring the present declaration to the knowledge of the States which have not taken part in the Congress of Paris, and invite them to accede to it.

"Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

"The present declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede to it."

The following are the Articles of the Treaty:—

"1. From the day of the exchange of the ratifications of the present treaty, there shall be peace and friendship between her Majesty the Queen of the United Kingdom of Great Britain and Ireland, his Majesty the Emperor of the French, his Majesty the King of Sardinia, his Imperial Majesty the Sultan, on the one part, and his Majesty the Emperor of all the Russias, on the other part; as well as between their heirs and successors, their respective dominions and subjects in perpetuity.

"2. Peace being happily re-established between their said Majesties, the territories conquered or occupied by their armies during the war shall be reciprocally evacuated. Special arrangements shall regulate the mode of the evacuation, which shall be as prompt as possible.

"3. His Majesty the Emperor of all the Russias engages to restore to his Majesty the Sultan the town and citadel of Kars, as well as the other parts of the Ottoman territory of which the Russian troops are in possession.

"4. Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of the French, the King of Sardinia, and the Sultan, engage to restore to his Majesty the Emperor of all the Russias the towns

and ports of Sebastopol, Balaklava, Kamiesch, Eupatoria, Kertch, Jenikale, Kinburn, as well as all other territories occupied by the allied troops.

"5. Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of the French, the Emperor of all the Russias, the King of Sardinia, and the Sultan, grant a full and entire amnesty to those of their subjects who may have been compromised by any participation whatsoever in the events of the war in favour of the cause of the enemy. It is expressly understood that such amnesty shall extend to the subjects of each of the belligerent parties who may have continued, during the war, to be employed in the service of one of the other belligerents.

"6. Prisoners of war shall be immediately given up on either side.

"7. Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, his Majesty the Emperor of Austria, his Majesty the Emperor of the French, his Majesty the King of Prussia, his Majesty the Emperor of all the Russias, and his Majesty the King of Sardinia, declare the Sublime Porte admitted to participate in the advantages of the public law and system (*concert*) of Europe. Their Majesties engage, each on his part, to respect the independence and the territorial integrity of the Ottoman Empire; guarantee in common the strict observance of that engagement; and will, in consequence, consider any act tending to its violation as a question of general interest.

"8. If there should arise between the Sublime Porte and one or more of the other signing Powers any misunderstanding which might endanger the maintenance of their relations, the Sublime Porte, and each of such Powers, before having recourse to the use of force, shall afford the other contracting parties the opportunity of preventing such an extremity by means of their mediation.

"9. His Imperial Majesty the Sultan, having, in his constant solicitude for the welfare of his subjects, issued a firman which, while ameliorating their condition without distinction of religion or of race, records his generous intentions towards the Christian population of his empire, and wishing to give a further proof of his sentiments in that respect, has resolved to communicate to the contracting parties the said firman, emanating spontaneously from his sovereign will. The contracting Powers recognise the high value of this communication. It is clearly understood that it cannot, in any case, give to the said Powers the right to interfere, either collectively or separately, in the relations of his Majesty the Sultan with his subjects, nor in the internal administration of his empire.

"10. The convention of the 13th of July, 1841, which maintains the ancient rule of the Ottoman Empire relative to the closing of the Straits of the Bosphorus and of the Dardanelles, has been revised by common consent. The act concluded for that purpose, and in conformity with that principle, between the high

contracting parties, is and remains annexed to the present treaty, and shall have the same force and validity as if it formed an integral part thereof."

"11. The Black Sea is neutralised. Its waters and its ports, thrown open to the mercantile marine of every nation, are formally and in perpetuity interdicted to the flag of war, either of the Powers possessing its coasts, or of any other Power, with the exceptions mentioned in Articles 14 and 19 of the present treaty.

"12. Free from any impediment, the commerce in the ports and waters of the Black Sea shall be subject only to regulations of health, customs, and police, framed in a spirit favourable to the development of commercial transactions. In order to afford to the commercial and maritime interests of every nation the security which is desired, Russia and the Sublime Porte will admit consuls into their ports situated upon the coast of the Black Sea, in conformity with the principles of International Law.

"13. The Black Sea being neutralised according to the terms of Article 11, the maintenance or establishment upon its coast of military-maritime arsenals becomes alike unnecessary and purposeless; in consequence his Majesty the Emperor of all the Russias, and his Imperial Majesty the Sultan engages not to establish or to maintain upon that coast any military-maritime arsenal.

"14. Their Majesties the Emperor of all the Russias and the Sultan having concluded a convention for the purpose of settling the force and the number of light vessels, necessary for the service of their coasts, which they reserve to themselves to maintain in the Black Sea, that convention is annexed to the present treaty, and shall have the same force and validity as if it formed an integral part thereof. It cannot be either annulled or modified without the assent of the powers signing the present treaty.

"15. The Act of the Congress of Vienna having established the principles intended to regulate the navigation of rivers which separate or traverse different states, the contracting powers stipulate amongst themselves that those principles shall in future be equally applied to the Danube and its mouths. They declare that this arrangement henceforth forms a part of the public law of Europe, and take it under their guarantee: The navigation of the Danube cannot be subjected to any impediment or charge not expressly provided for by the stipulations contained in the following articles; in consequence, there shall not be levied any toll founded solely upon the fact of the navigation of the river, nor any duty upon the goods which may be on board of vessels. The regulations of the police and of quarantine to be established for the safety of the states separated or traversed by that river, shall be so framed as to facilitate, as much as possible, the passage of vessels. With the exception of such regulations, no obstacle whatever shall be opposed to free navigation.

"16. With the view to carry out the arrangements of the preceding Articles, a Commission, in which Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, shall each be represented by one delegate, shall be charged to designate and to cause to be executed the works necessary below Isatcha, to clear the mouth of the Danube, as well as the neighbouring parts of the sea, from the sands and other impediments which obstruct them, in order to put that part of the river and the said parts of the sea in the best possible state for navigation.

In order to cover the expenses of such works, as well as of the establishments intended to secure and to facilitate the navigation at the mouths of the Danube, fixed duties, at a suitable rate, settled by the Commission by a majority of votes, may be levied, on the express condition that, in this respect as in every other, the flags of all nations shall be treated on the footing of perfect equality.

"17. A Commission shall be established and shall be composed of delegates of Austria, Bavaria, the Sublime Porte, and Wurtemberg (one for each of those powers), to whom shall be added Commissioners from the three Danubian Principalities, whose nomination shall have been approved by the Porte. This Commission, which shall be permanent:—1. Shall prepare regulations of navigation and river police. 2. Shall remove the impediments, of whatever nature they may be, which shall prevent the application to the Danube of the arrangements of the Treaty of Vienna. 3. Shall order and cause to be executed the necessary works throughout the whole course of the river. And 4. Shall, after the dissolution of the European Commission, see to maintaining the mouths of the Danube and the neighbouring parts of the sea in a navigable state.

"18. It is understood that the European Commission shall have completed its task, and that the River Commission shall have finished the works described in the preceding articles, under Nos. 1 and 2, within the period of two years. The signing powers assembled in Conference having been informed of that fact, shall, after having placed it on record, pronounce the dissolution of the European Commission; and from that time the permanent River Commission shall enjoy the same powers as those with which the European Commission shall have until then been invested.

"19. In order to insure the execution of the regulations which shall have been established by common agreement in conformity with the principles above declared, each of the contracting powers shall have the right to station, at all times, two light vessels at the mouths of the Danube.

"20. In exchange for the towns, ports, and territories enumerated in Article 4 of the present treaty, and in order more fully to secure the freedom of the navigation of the Danube, his Majesty the Emperor of all the Russias consents to the rectification of his frontier in Bessarabia. The new frontier shall begin from the Black Sea, one kilometre to the east



of the Lake Bournasola, shall run perpendicularly to the Akerman Road, shall follow that road to the Val de Trajan, pass to the south of Bolgrad, ascend the course of the River Yalpuck to the Height of Saratsika, and terminate at Katamori on the Pruth. Above that point the old frontier between the two empires shall not undergo any modification. Delegates of the contracting powers shall fix, in its details, the line of the new frontier.

"21. The territory ceded by Russia shall be annexed to the Principality of Moldavia under the suzerainty of the Sublime Porte. The inhabitants of that territory shall enjoy the rights and privileges secured to the Principalities; and, during the space of three years, they shall be permitted to transfer their domicile elsewhere, disposing freely of their property.

"22. The Principalities of Wallachia and Moldavia shall continue to enjoy under the suzerainty of the Porte, and under the guarantee of the contracting Powers, the privileges and immunities of which they are in possession. No exclusive protection shall be exercised over them by any of the guaranteeing Powers. There shall be no separate right of interference in their internal affairs.

"23. The Sublime Porte engages to preserve to the said Principalities an independent and national administration, as well as full liberty of worship, of legislation, of commerce, and of navigation. The Laws and Statutes at present in force shall be revised. In order to establish a complete agreement in regard to such revision, a special commission, as to the composition of which the high contracting Powers will come to an understanding among themselves, shall assemble without delay at Bucharest, together with a Commissioner of the Sublime Porte. The business of this commission shall be to investigate the present state of the Principalities, and to propose bases for their future organisation.

"24. His Majesty the Sultan promises to convoke immediately in each of the two provinces a Divan *ad hoc*, composed in such a manner as to represent most closely the interests of all classes of society. These Divans shall be called upon to express the wishes of the people in regard to the definitive organisation of the principalities. An instruction from the congress shall regulate the relations between the commission and these Divans.

"25. Taking into consideration the opinion expressed by the two Divans, the commission shall transmit, without delay, to the present seat of the conferences, the result of its own labours. The final agreement with the Suzerain power shall be recorded in a convention to be concluded at Paris between the high contracting parties; and a hatt-i-sherif, in conformity with the stipulations of the convention, shall constitute definitively the organisation of those provinces, placed thenceforward under the collective guarantee of all the signing Powers.

"26. It is agreed that there shall be in the Principalities a national armed force, organised

with the view to maintain the security of the interior, and to ensure that of the frontiers. No impediment shall be opposed to the extraordinary measures of defence which, by agreement with the Sublime Porte, they may be called upon to take in order to repel any external aggression.

"27. If the internal tranquillity of the Principalities should be menaced or compromised, the Sublime Porte shall come to an understanding with the other contracting Powers in regard to the measures to be taken for maintaining or re-establishing legal order. No armed intervention can take place without previous agreement between those powers.

"28. The Principality of Servia shall continue to hold of the Sublime Porte, in conformity with the Imperial Hatt which fix and determine its rights and immunities, placed henceforward under the collective guarantee of the contracting Powers. In consequence, the said Principality shall preserve its independent and national administration, as well as full liberty of worship, of legislation, of commerce, and of navigation.

"29. The right of garrison of the Sublime Porte, as stipulated by anterior regulations, is maintained. No armed intervention can take place in Servia without previous agreement between the high contracting Powers.

"30. His Majesty the Emperor of all the Russias and his Majesty the Sultan maintain, in its integrity, the state of their possessions in Asia, such as it legally existed before the rupture. In order to prevent all local dispute the line of frontier shall be verified, and, if necessary, rectified, without any prejudice as regards territory being sustained by either party. For this purpose a mixed Commission, composed of two Russian Commissioners, two Ottoman Commissioners, one English Commissioner, and one French Commissioner, shall be sent to the spot immediately after the re-establishment of diplomatic relations between the Court of Russia and the Sublime Porte. Its labours shall be completed within the period of eight months after the exchange of the ratifications of the present treaty.

"31. The territories occupied during the war by the troops of their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, the Emperor of the French, and the King of Sardinia, according to the terms of the conventions signed at Constantinople on the 12th of March, 1854, between Great Britain, France, and the Sublime Porte; on the 14th of June of the same year between Austria and the Sublime Porte; and on the 15th of March, 1855, between Sardinia and the Sublime Porte; shall be evacuated as soon as possible after the exchange of the ratifications of the present treaty. The periods and the means of execution shall form the object of an arrangement between the Sublime Porte and the Powers whose troops have occupied its territory.

"32. Until the treaties or conventions which existed before the war between the belligerent

Powers have been either renewed or replaced by new acts, commerce of importation or of exportation shall take place reciprocally on the footing of the regulations in force before the war; and in all other matters their subjects shall be respectively treated upon the footing of the most favoured nation.

"33. The convention concluded this day between their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of the French, on the one part, and his Majesty the Emperor of all the Russias, on the other part, respecting the Aland Islands, is and remains annexed to the present treaty, and shall have the same force and validity as if it formed a part thereof.

"34. The present treaty shall be ratified and the ratifications shall be exchanged at Paris in the space of four weeks, or sooner if possible. In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms. Done at Paris the 30th day of the month of March, in the year 1856."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMONS INCLOSURE.

19 VICT. C. 11.

Inclosures mentioned in Schedule may be proceeded with; s. 1.

Short title; s. 2.

The following are the Title and Sections of the Act:—

An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales. [11th April, 1856.]

Whereas the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and Improvement, of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the Schedule to this Act, and have in their Eleventh Annual General Report certified their opinion that such inclosures would be expedient; but the same cannot be proceeded with without the previous authority of Parliament: Be it enacted, as follows:—

1. That the said several proposed Inclosures mentioned in the Schedule to this Act be proceeded with.

2. In citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use either the expression "The Annual Inclosure Act, 1856," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

## SCHEDULE TO WHICH THIS ACT REFERS

Inclosure.	County.	Date of Provisional Order.
Southwick . . .	Sussex . . .	May 26, 1854
Steep . . .	Southampton . . .	May 17, 1855
Edlesborough . . .	Bucks . . .	May 31, 1855
Birchanger . . .	Essex . . .	June 28, 1855
Highweek . . .	Devon . . .	July 5, 1855
Marrick . . .	York . . .	Aug. 2, 1855
Wiggenhall Mead & Middle Moor Mead . . .	Hertford . . .	April 19, 1855
Romsley . . .	Worcester . . .	June 18, 1855
Church Coniston . . .	Lancaster . . .	Aug. 2, 1855
Ingoldsthorpe . . .	Norfolk . . .	Aug. 2, 1855
Capel Rigg Intack . . .	Westmorland . . .	Sept. 6, 1855
Retendon . . .	Essex . . .	Sept. 5, 1855
Alderholt . . .	Dorset . . .	July 6, 1855
West Chiltonington . . .	Sussex . . .	Oct. 25, 1855
Conisbrough . . .	York . . .	Aug. 18, 1855
Lockhill Wood . . .	Hertford . . .	June 25, 1855
Coventry . . .	Warwick . . .	July 5, 1855
Mappledurwell . . .	Southampton . . .	Dec. 20, 1855
Meonstoke . . .	Southampton . . .	Jan. 4, 1856
Llanteague Common . . .	Pembroke . . .	Jan. 17, 1856
Penherget . . .	Cornwall . . .	Jan. 21, 1856
Langley . . .	Kent . . .	Jan. 4, 1856
Talyvan . . .	Glamorgan . . .	Jan. 17, 1856
Woolscott . . .	Warwick . . .	May 17, 1855
Hunderthwaite . . .	York . . .	Jan. 17, 1856
Hexton . . .	Hertford . . .	Oct. 6, 1853
Upton upon Severn and Ripple . . .	Worcester . . .	Jan. 10, 1856
Rogate . . .	Sussex . . .	Jan. 12, 1856
Niton (Isle of Wight) . . .	Southampton . . .	Dec. 22, 1856

## THIRD REPORT OF THE CHANCERY COMMISSIONERS.

### AS TO THE REGISTRARS' OFFICE.

VARIOUS suggestions have been made to the Commissioners for improving the mode of transacting the business of the registrars' office.

Among others it has been proposed that the registrars should be relieved from the duty of attending to countersign the Accountant-general's cheques. This duty was formerly performed by the registrars only, but by an order of Lord St. Leonards, made on 27th July, 1852, the duty was directed to be performed by the Master of the Reports and Entries on three days of the week, one of the registrars being in attendance on the other three days. It is stated in the Report, that—

"When the Accountant-General draws any cheque upon the Bank except for dividends, the sum for which the draft is drawn is marked in figures in the margin of the order directing the payment, and the Accountant-General puts his initials opposite these figures. It is the duty of the registrar before he countersigns the cheque to see that the cheque is drawn in favour of the person to whom it is

ordered to be paid, and that the amount of it corresponds with the sum specified in the order, and he writes his initials in the margin of the order opposite the amount specified. This signature operates as a guard against two cheques being produced to the registrar successively for the same payment. The same course is pursued on the first payment of dividends under an order, but after the first payment the order is not produced to the registrar, so that he simply countersigns the Accountant-General's cheque on its being produced to him. It is the practice in the Accountant-General's office for the Accountant-General to sign the cheques upon his being satisfied that the cheque is drawn in favour of the proper person and for the proper amount. The cheques being so drawn are intrusted to the clerks, to be by them given out to the persons entitled, on their signing a receipt in the Accountant-General's books. These cheques, especially cheques drawn for dividends, may remain some time in the office before application is made for them.

"If the practice of countersigning the cheques were abolished, the consequence would be that if a cheque were abstracted from the office, any person might obtain payment for it at the bank at once, and without application elsewhere. According to the present system this could not be done, but the cheque, after it has been received from the clerk, must be presented to the registrar or the Master of the Reports, and except when drawn for dividends the order must also be presented to one of these officers. We regard this course of proceeding as a protection against fraud, and we are not prepared to recommend the abolition of such protection, more especially as we find that the Accountant-General is strongly opposed to its removal, and indeed is of opinion that an opportunity should be afforded for performing this duty more carefully than it can be at present done, by the countersigning officer being relieved from all other business during his attendance at the Accountant-General's office. We think it is of importance that this duty of countersigning the cheques should still be performed, and we are of opinion that a duty of this nature is better intrusted to a body of responsible and experienced officers like the registrars, acting in rotation, than to a single officer to be appointed for the purpose."

It has been also suggested that the number of registrars should be increased to 12, thus giving two registrars to each Court; but the Commissioners are not satisfied that an increase in the number of registrars is necessary. They observe that—

"The Lord Chancellor and the Lords Justices are not sitting in separate Courts every day in the week, except perhaps during Michaelmas and Hilary Terms and the intermediate sittings, at which time there is less press of business than at other periods of the

year, so that an increase in the number of registrars does not appear necessary on the ground of the constant sitting of six Courts. It will be seen that in a subsequent part of this our report we recommend that assistance should be given to the registrars in the discharge of their duties out of Court. Should this recommendation be carried into effect, the registrars will be greatly relieved in respect of this portion of their business. We think it right, however, to observe that, though we do not recommend the appointment of an additional registrar at present, we think it probable that such an appointment may hereafter be required, especially having regard to the progressive increase in the number of orders, and we consider it desirable that power should be given to the Lord Chancellor to increase the number of registrars to 12, if, after the alterations which it is proposed to make shall have been made, such an appointment should be found necessary. The recent abolition of the office of the Master of the Reports and Entries furnishes, in our opinion, an additional reason for giving such a power to the Lord Chancellor, because the whole duty of countersigning the Accountant-General's cheques, half of which is now performed by the gentleman who lately held the office of Master of the Reports, will, upon his death, devolve on the registrars."

It has been further suggested that the orders should be drawn by the solicitors and submitted to the registrars for their sanction. The Commissioners do not, however, approve of this suggestion.

"We think that the orders of the Court should be drawn up by officers of the Court trained for the purpose, and we apprehend that orders drawn up by agents of the parties would often be made more favourable to the party drawing them up than the judgment of the Court warranted, and that consequently disputes and differences would arise more frequently, leading to great expense and frequent applications to the Court. We apprehend, moreover, that uniformity in the mode of drawing up orders would gradually cease, and that much confusion and uncertainty would consequently be introduced into the practice of the Court. A serious additional expense would also be thrown upon the suitors by such a change in the practice, for practically the orders would in most cases be drawn by counsel, and delay would also, in our opinion, be increased, since it would often be impracticable for counsel, consistently with their other engagements, to frame the order immediately after it was pronounced. We have arrived at the conclusion that the orders should continue to be drawn up by the registrars."

The Commissioners think, however, that the practice of the registrar's office, by which the minutes of decretal orders are drawn up by the registrars, and the minutes of orders on petitions and motions by the clerks, should be altered as follows:—

"That the clerk attached to each registrar should prepare such of the orders, whether decretal or otherwise, as the registrar to whom he is attached may direct, and that the drafts of all the orders prepared by the clerk should be submitted to, or be expressly sanctioned by, the registrar before the draft is delivered out. We also think that it should be an instruction to the registrars to deliver out the draft in the first instance in as perfect a state as possible, and with this view we recommend that a general order should be issued, specifying in general terms what papers are to be left, preparatory to drawing up the order, so that the solicitor may know authoritatively what is required.

"We also think that a short limited time should be fixed by a general order within which the order should be bespoken and the papers left; and that in case of non-compliance with the general order by the party having the conduct of it, the registrar should be authorised to decline drawing up the order without the express sanction of the Court.

"We are further of opinion that in all cases the draft order should be made complete before the order is given out to be transcribed, and that care should be taken to avoid as much as possible any alteration in the transcript. We think that the passing of the order should be almost a formal act.

"We do not consider that the responsibility of the order corresponding with the draft should rest with the solicitors. When the draft is settled, and left with the registrar for transcript we think that the office should be responsible for its accuracy. Indeed, we think that if greater care were bestowed on a settlement of the draft there would be few cases in which it would be necessary to attend the registrar again on passing the order."

The Commissioners are further of opinion that each of the registrars should have an assistant clerk, appointed by him and removable at his pleasure.

"That the duty of such assistant clerk should be to receive, take care of, and deliver out papers, fix appointments, answer ordinary applications, set down causes, and transact such other business as he might be directed to do. The clerks in the rotation would thus be relieved from much troublesome occupation; which interferes with the discharge of their proper duties, and would be thereby enabled to devote their undivided time and attention to drawing up the orders of the Court.

"We also think that the clerk in the rotation attached to each registrar should be specially under his control. It has been suggested that it would be expedient to make the clerk's right of succession contingent on a certificate of good conduct to be given by the registrar to whom he may be attached; and we are disposed to think that an adoption of this rule would be attended with advantage, subject to a power to the Lord Chancellor to dispense with the certificate for any special reason applicable to the particular case. Such a certificate could not,

however, with propriety be required in the case of existing clerks, whose right of succession is regulated by Act of Parliament."

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"In particular, doubts have been expressed whether it is expedient to have a distinct body of trained registrars, and whether it would not be an improvement, on the occurrence of vacancies to select the registrars from among members of the Legal Profession, either Barristers or Solicitors, leaving them to appoint their own clerks. We think that it is advisable to keep up the registrars' office as a separate establishment, the clerks rising by seniority and ultimately becoming registrars, but we do not enter further upon the consideration

ration of this general question, remarking only upon this point that a complete change in the system could not be effected for many years to come, on account of the vested rights of the existing clerks."

The Commissioners think, however, that it would be expedient to make some alterations in the constitution of the office applicable only to future appointments.

"Considering the time which must elapse before a clerk entering the office becomes a registrar, we think it desirable that a person should not be eligible after a certain age. The average period of service as a clerk being 20 years, we think it would be right to fix the age of entry at not later than 25 or 26 years. It has been suggested that each clerk should serve a year of probation, and that he should not be fully appointed without a certificate of approval by the senior registrar of his conduct during the year. We approve of this suggestion.

"We are further of opinion that the junior clerks in the rotation not attached in particular to any registrar should, subject to the supervision of the senior registrar, be specially under the superintendence of the two principal clerks to the registrars who have not declined the office of registrar, and that opportunities should be afforded to these two principal clerks of attending the Court to qualify themselves for the office of registrar to which they are next in succession."

The Commissioners think, also, that the improvements in the constitution and practice of the registrar's office which they have recommended, would be incomplete so long as the present want of proper accommodation exists.

"We consider that each registrar should have a separate room, that the principal clerk attached to each registrar should also have a separate room contiguous to the room occupied by the registrar, and that proper and convenient accommodation should be provided for the other clerks and for the public.

"We see no reason to recommend any change in the hours of attendance at the registrars' office.

"We are of opinion, that the orders of the Court may in many cases be usefully shortened, and that in many cases, the ordinary directions contained in decrees might be provided for by general orders. The general orders made by Lord Cranworth on the 7th November, 1853, apply this principle to orders in lunacy, and have not produced any inconvenience that we are aware of.

"We consider that much trouble and inconvenience might be avoided, if persons presenting petitions to the Court were required to state at the foot of the petition the persons, if any, upon whom the petition was intended to be served.

"We find that the registrars are desirous of

being relieved from the responsibility imposed on them of seeing that funds disposed of under orders of the Court are properly discharged from legacy and succession duties; and they suggest that the Court should be satisfied of the discharge before the order is made. We are, however, of opinion that the practice cannot safely or properly be altered in this respect. The duties are seldom paid or provided for until after the party liable has been declared entitled to the fund, and has obtained an order for payment. In many cases it is not known until after the decision of the Court what legacy or succession duty is payable, or by whom it is to be paid. If, therefore, the Judge were in every case to be satisfied of this fact, a further hearing for this purpose would in many cases take place, thus causing increased expense and delay. We consider that the registrar is the proper officer to discharge such duties when imposed by the Legislature on the Court."

## COMMON LAW PROCEDURE ACT, 1854.

### EXTENSION OF ACT TO SALFORD BOROUGH COURT OF RECORD.

It is ordered by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, all the provisions of the "Common Law Procedure Act, 1854," and the rules made and to be made in pursuance thereof, with all requisite modifications and alterations with reference to the constitution and peculiar circumstances of the said Court (and except such provisions as are contained in the sections of the said Act numbered respectively 2, 17, 75, 76, 77, 95, 97, 98, and the whole of the 99th section, except so much thereof as explains the meaning of the word "action;" and also except sections 100, 101, 102, 104, 105, and 107, in the copy of the said Act printed by her Majesty's printers) shall extend and apply to the Court of Record for the hundred of Salford, in the county of Lancaster.

And it was further directed that all the authorities, powers, or duties exercisable by the Court or a Judge; or any number of Judges, under any of the sections of the said "Common Law Procedure Act, 1854," hereby extended and applied to the said Court of Record for the hundred of Salford, shall, as regards matters and proceedings in the said Court of Record, be exercisable and exercised by such Court or the Judge thereof, or his deputy duly appointed; that all the authorities, powers, or duties, exercisable by a Master, or any number of Masters, under any of the sections of the said Act as aforesaid, shall, as regards matters and proceedings in the said Court of Record, be exercisable and exercised by the Registrar of the said Court, or his deputy duly appointed; and that all the authorities, powers, or duties exercisable by a sheriff under any of the sections of the said Act as

aforesaid, shall, as regards matters and proceedings in the said Court of Record, be exercisable and exercised by the Head Bailiff of the said Court.—From the *London Gazette* of 8th April.

## SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855.

### EXTENSION OF ACT TO SALFORD BOROUGH COURT OF RECORD.

It is ordered by her Majesty in Council, that within one month after such order shall have been made and published in the *London Gazette*, all the provisions of the "Summary Procedure on Bills of Exchange Act, 1855," and the rules made and to be made in pursuance thereof, shall, with all requisite modifications and alterations with reference to the constitution and peculiar circumstances of the said Court (and except such provisions as are contained in the sections numbered respectively 8, 9, and 10 in the copies of the said Act printed by her Majesty's printers, and except so much of section 1 as provides for the mode of fixing the amount of costs to be endorsed on the writ of summons under that section), extend and apply to the said Court of Record for the hundred of Salford, in the county of Lancaster.

And it was further directed, that all the authorities, powers, or duties, exercisable by the Court or a Judge, or any number of Judges, under any of the sections of the said "Summary Procedure on Bills of Exchange Act, 1855," hereby extended and applied to the said Court of Record for the hundred of Salford, shall, as regards matters and proceedings in the said Court of Record, be exercisable and exercised by such Court or the Judge thereof, or his deputy duly appointed; that all the authorities, powers, or duties exercisable by a Master or any number of Masters under any of the sections of the said Act as aforesaid, shall, as regards matters and proceedings in the said Court of Record, be exercisable and exercised by the Registrar of the said Court, or his deputy duly appointed; and that all the authorities, powers, or duties exercisable by a sheriff under any of the sections of the said Act as aforesaid, shall, as regards matters and proceedings in the said Court of Record, be exercisable and exercised by the Head Bailiff of the said Court.—From the *London Gazette* of 8th April.

## QUESTIONS AT THE EXAMINATION.

*Easter Term, 1856.*

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

### II. COMMON LAW AND PRACTICE OF THE COURTS.

5. What is the mode of proceeding in the case of a defendant residing within the jurisdiction of the Superior Courts, who wilfully evades personal service of the writ of summons?
6. Is the service of the writ of summons confined to any particular county?
7. For how many months is the writ of summons in force?
8. Define a plea by way of *traverse*, and a plea by way of *confession and avoidance*.
9. What is put in issue by the plea of "never was indebted" to a common count?
10. Can a defendant demur to a declaration which though informal is good in substance? Give your reasons for your answer.
11. From what time does the Statute of Limitations in an action for the breach of a simple contract begin to run?
12. What is required by the Statute of Frauds to make a contract for the sale of goods, for the price of 10*l.*, binding?
13. In what case is an infant responsible for the breach of his contract?
14. What do you understand by the legal maxim—*Actio personalis moritur cum persona*? and by what recent enactment has this maxim been qualified?
15. *A.* obtains judgment against *B.*, to whom *C.* is indebted,—how can *A.* obtain the benefit of this debt?
16. State some of the grounds upon which a new trial is usually granted?
17. What are the steps to be taken by the holder of a bill of exchange to entitle him to sue the indorser upon the bill?
18. What are the chief distinctions between cases of libel and slander?
19. What is the foundation of the action at the suit of a parent for the seduction of his daughter?

### III. CONVEYANCING.

20. Define a base fee.
21. *A.* is tenant for life of freehold land, and *B.* is tenant in tail in remainder. How is *B.* to acquire an estate in fee simple in remainder?
22. Define an incorporeal hereditament, and give some instances.
23. Define an estate in tail general, and an estate in tail male special.
24. Freehold land is limited to such uses as *A.* may appoint. *A.* appoints to *B.* and his heirs, to the use of *C.* and his heirs, in trust for *D.* and his heirs. What estates do *B.*, *C.*, and *D.* respectively take?
25. Define an estate in tail male general, and an estate in tail special.
26. Define a chattel real.
27. A mortgagee in fee dies intestate, and the mortgagor afterwards pays off the mortgage, who are necessary parties to the reconveyance?
28. *A.* is possessed of a lease for years, and

dies, having appointed *B.* his executor. *B.* proves the will and dies intestate. By whom may the lease be assigned?

29. *A.* purchases copyhold land from *B.* What acts are necessary for perfecting the title of *A.*?

30. *A.* makes a voluntary settlement on his wife and children of land held in fee, and afterwards conveys to *B.*, who has notice of the settlement, for a valuable consideration. Is *B.*'s title good?

31. What is tenancy by the curtesy of England?

32. What are the requisites to the due execution of a will?

33. *A.* holds lands on lease for his life, *B.* holds land on lease for 99 years, if he so long live. What is the difference of the interests of *A.* and *B.* in their respective lands?

34. *A.* grants a mortgage of land to *B.* in fee, and afterwards desires to grant a valid lease of the land to *C.* for a term of years. Is *B.* a necessary party to the lease, and if so, why?

#### IV. EQUITY AND PRACTICE OF THE COURTS.

35. Give some account of the origin of the equitable jurisdiction of the Court of Chancery, and from whom it was borrowed.

36. Why was the writ of subpoena to answer in Chancery at variance with the first principles of the Common Law? In whose reign was it invented, and by whom, and when, was the writ finally abolished?

37. Does Equity really mean what its name implies, or in what respect does it differ?

38. Mention some of the cases in which it interposes a relief when at Common Law no remedy is found.

39. Mention some of the cases in which an agreement is not binding in Equity.

40. How are *femes covert* favoured by Equity Courts? Can a married woman sue there, and how?

41. What becomes of her choses in action when she survives her husband?

42. In what cases will Equity enforce her contracts?

43. Will Equity enforce the contracts of an infant for and against him, and, if so, how is that to be done?

44. What protection do lunatics receive from the same Courts, and how is such lunacy to be established?

45. What is the rule of Equity Courts in the construction of deeds and wills; when there are two clauses absolutely inconsistent with each other, which clause prevails, the first or the last, and is the rule the same in both deeds and wills, and, if different, in what particular?

46. Set forth the several stages of an administration suit down to a final decree, distributing the funds brought into Court to the various classes of persons usually entitled when the assets are more than sufficient to pay debts and legacies.

47. Explain the duties that the Chief Clerk

of the Judge has to perform before such a decree can be obtained.

48. Also the services of the Taxing Master, and when and how, his services are brought into action.

49. State the changes recently introduced in the mode of taking evidence? How were witnesses examined before the late Chancery Amendment Procedure Act, and how are they now examined.

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. What are the chief points of difference between the Bankrupt and Insolvent Debtors' Laws?

51. What are the Courts which exercise jurisdiction in matters of bankruptcy?

52. What is the general definition of a trader within the meaning of the Bankrupt Law? and is there any, and if so what, rule as to the nature and extent of trading requisite to render a man liable to the Bankrupt Law?

53. Is it essential the trading should be carried on in England?

54. What acts constitute acts of bankruptcy *per se*? What are the acts with which there must be coupled an intention on the part of a trader to defeat or delay creditors?

55. What are the means by which a trader may, unless he pays his creditors, be compelled to commit an act of bankruptcy?

56. What must be the nature of the petitioning creditor's debt? and in what chief points does it differ from a debt proveable under an adjudication?

57. Does a judgment creditor of a bankrupt have a preference or priority over the other creditors?

58. Suppose a debt sufficient to constitute a petitioning creditor is due to a single woman, but not payable till after her marriage, upon whose petition and deposition would you proceed to make a trader a bankrupt?

59. Is there any property of a bankrupt which does not pass to his assignees by virtue of their appointment?

60. Can an annuity creditor prove for his annuity? and if so, how?

61. Has a landlord any right of distress against the goods of a bankrupt? State the law on the subject.

62. State the modes by which a trader may have his affairs arranged under the power of the Bankrupt Law Consolidation Act, 1849, without his being adjudicated a bankrupt.

63. How are debts payable on contingencies, which have not happened before filing the petition, proved under the bankruptcy?

64. If goods consigned to a trader for sale are found on his bankruptcy mixed with his own stock, do they, or not, pass to his assignees, as goods within his order and disposition?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. Which of the Superior Courts at West-

Minster has criminal jurisdiction? and state generally the nature of that jurisdiction.

66. By what proceeding can an indictment found in an inferior Court be removed for trial into the Superior Court?

67. State what constitutes the crime of burglary, and what it is necessary to prove in order to convict one accused of that offence.

68. Is the crime of forgery in any case now punishable with death?

69. Under what Act can bankers and others, be punished for misapplying property intrusted to them? State shortly the provisions of the Act.

70. Is the compounding of a felony a criminal offence; what is its nature, and how is it punishable?

71. Can an indictment for conspiracy be supported against a husband and wife only?

72. What, if any, protection is afforded to a married woman who has joined with her husband in committing a felony?

73. Until what age is an infant considered, in law, incapable of committing a felony?

74. Is the evidence of the mother of an illegitimate child held sufficient alone to obtain an affiliation order on the putative father?

75. What is the Statute which inflicts punishment for shooting at, cutting, or wounding, with intent to maim, or disfigure, or to do a person some grievous bodily harm, and what is the punishment inflicted?

76. What is the least number of witnesses as to each act of perjury necessary to convict on an indictment for that offence?

77. What effect has a conviction for perjury on the civil position of a person convicted of that crime?

78. Is there any, and what, distinction as to the necessary steps in order to retain a Queen's Counsel, or Counsel with a patent of precedence, for a prisoner or defendant in a criminal prosecution?

79. What effect has a conviction and attainder for felony on the real and personal property of the convict?.

## LAW OF COSTS.

### OF DEFENDANTS NOT FORMALLY SERVED WITH NOTICE OF MOTION.

THE plaintiff being about to bring on a motion, applied to Mr. D., who was the solicitor to some of the defendants resident out of the jurisdiction, to appear for them; and though not formally served with a notice of motion, a copy was furnished him. Mr. D. at first refused to appear for them, but afterwards expressed his willingness to do so, and the plaintiff's solicitor wrote him a note, stating when the motion would come on.

The motion having been refused with costs, held that these defendants were entitled to their costs. *Shaw v. Forrest*, 20 Beav. 249.

### SECURITY ON PLAINTIFF GOING ABROAD PENDING SUIT.

After the defendant had appeared and answered to a bill, in which the plaintiff described himself as of Ellington Terrace, Liverpool Road, in the county of Middlesex, master mariner, the plaintiff amended describing himself as of the ship *Wacousta*, now on a voyage to Sydney and back to London, master mariner.

On a motion that he might give security for costs, the *Master of the Rolls* said:—"I understand the rule to be this:—that this Court, in all cases of this kind, sees whether there is reasonable security that any order it may make against the plaintiff can be enforced, and does not compel a plaintiff to give security for costs, merely because he goes abroad pending the suit, for he may have no intention of remaining there.

"In this case I find that the plaintiff has no fixed abode in this country, that he has gone abroad out of the jurisdiction, and that there is nothing to show when he will return. The order must be made." *Stewart v. Stewart*, 20 Beav. 322.

## POINTS IN EQUITY PRACTICE.

### TITLE OF AFFIDAVIT ON APPOINTING GUARDIAN TO INFANT IN SPECIAL CASE.

*Held*, that the affidavit as to the fitness of a proposed guardian to concur in a special case, under the 13 & 14 Vict. c. 35, on behalf of an infant, should be entitled not only *In the matter of the Infant*, but also *In the matter of the Act*. It is irregular to entitle the affidavit *In the special case*, inasmuch as at the time when the affidavit is filed, the special case is not on the file, and cannot therefore be considered as in existence. *Star v. Newbery*, 20 Beav. 14.

### ON PLAINTIFF'S MISDESCRIPTION IN BILL.—PLEA.

The plaintiff, in his bill, described himself as W. A. B., "of Gray's Inn, Barrister-at-Law, and of No. 2, Cloisters, Temple, in the city of London." One of the defendants pleaded that such description was false, and that the plaintiff was not resident at No. 2, Cloisters, Middle Temple, and that the plaintiff's residence was unknown to him at the time of bill filed and ever since, &c.

The *Master of the Rolls*, in overruling the plea as bad in form for negating a residence at Gray's Inn, said:—"I wish particu-

larly to guard myself against its being supposed that I have said anything to countenance the doctrine, that such a plea as this can be maintained. It is new to me. I have never, in practice, met with one like it, and it is difficult to reconcile it with the principles and practice of the Court. The ordinary mode of proceeding in such cases is to move for security for costs." *Bainbridge v. Orton*, 20 Beav. 28.

## ORDER OF COURT OF CHANCERY.

### TRANSFER OF CAUSES.

WHEREAS, from the present state of business before the Lord Chancellor and Master of the Rolls, respectively, it is deemed expedient that a portion of the Causes set down before the Lord Chancellor to be heard before the Vice-Chancellor Sir William Page Wood, should be transferred to the Master of the Rolls' Book of Causes for hearing. Now I do hereby Order, that the several Causes set forth in the Schedule hereunto subjoined, be accordingly transferred from the Book of Causes of the Vice-Chancellor Sir William Page Wood to that of the Master of the Rolls. And I do hereby Order that all Causes so to be transferred (although the Bills in such Causes may have been marked for the Vice-Chancellor Sir William Page Wood, under the Orders of Court of the 5th May, 1837, and notwithstanding any Orders therein made by the Vice-Chancellor Sir William Page Wood, or his predecessors), shall hereafter be considered and taken as causes originally marked for the Master of the Rolls, and be subject to the same Regulations as all Causes marked for the Master of the Rolls are subject to by the same Orders, Provided nevertheless that no Order made by the Vice-Chancellor Sir William Page Wood, or his predecessors, in any such Causes, shall be varied or reversed otherwise than by the Lord Chancellor or the Lords Justices. And this Order is to be drawn up by the Registrar, and set up in the several Offices of this Court.

CRANWORTH, C.

April 30, 1856.

### SCHEDULE.

Jackson v. Asquith, cause.  
 Donaldson v. Corner, motion for decree.  
 Todd v. Garbutt, motion for decree.  
 Dent v. Hutchinson, motion for decree.  
 Hervey v. Smith, cause.  
 Tritton v. Bland, motion for decree.  
 Armstrong v. Armstrong, motion for decree.  
 Vouillon v. States, motion for decree.  
 University of London v. Yarrow, cause.  
 D'Oechsner v. Scott, cause.  
 Tranmar v. Read, motion for decree.  
 Digweed v. Bailey; Merrit v. Bailey, motion for decree.  
 Bloor v. Bloor, motion for decree.  
 Waters v. Thorne, cause.

Gardiner v. Salter, cause.  
 Otter v. Vaux, cause.  
 Gardiner v. Downes, cause.  
 Spencer v. Topham; Goodricke v. Topham, motion for decree.  
 Todd v. Beilby, cause.  
 Hoy v. Smithies, cause.  
 Chaffers v. Day; Same v. Same, cause.  
 Clarke v. Mathews, motion for decree.  
 Marsh v. Marsh, motion for decree.  
 Farebrother v. Wodehouse, motion for decree.  
 Paxton v. Bruce, motion for decree.  
 Squires v. Ashford, motion for decree.  
 Edwards v. Wilkinson, motion for decree.  
 Welchman v. Pool, motion for decree.  
 Shribley v. Lambert, cause.  
 Woodruff v. Vaughan, motion for decree.  
 Turner v. Whitaker, motion for decree.  
 Horsman v. Cannon, motion for decree.  
 South Yorkshire Railway Co. v. Oliver, motion for decree.  
 Lloyd v. Solicitors and General Life Assurance Society, cause.  
 Woodburn v. Grant, motion for decree.  
 The Official Manager of the Royal Bank of Australia v. Pryme, motion for decree.  
 The Manchester, Sheffield, and Lincolnshire Railway Company v. The Worksoop Board of Health, cause.  
 Samuel v. Dunn, cause.  
 Cox v. Harding, motion for decree.  
 Ellis v. Richmond, cause.  
 Wheatcroft v. South Yorkshire Railway, and River Dunn Company, motion for decree.  
 Lea v. Lilley, motion for decree.  
 Kershaw v. Calow, cause.  
 Davey v. Durrant, motion for decree.  
 Baldwin v. Baldwin, motion for decree.  
 Calow v. Kershaw, cause.  
 Child v. Jones, motion for decree.  
 Hopwood v. Hopwood, motion for decree.  
 Robinson v. Sykes, cause.  
 Soraby v. Fowler, motion for decree.

CRANWORTH, C.

## INNS OF COURT.

PROSPECTUS OF THE LECTURES, TRINITY TERM, 1856.

### Constitutional Law and Legal History.

The Public Lectures to be delivered by the Reader on *Constitutional Law and Legal History* will comprise the following subjects:—

Condition of Religious Parties at the Accession of James the First—Privileges of the House of Commons—Character and Results of Political Struggles during his Reign—Influence of the Church—Attempts to make it Independent of State Control—Conduct of the Judges during the Reigns of the Stuarts—Progress and History of Jurisprudence—Reigns of Charles the First and Charles the Second—Causes of the Revolution—Reign and Policy of William the Third.

In his Private Lectures the Reader, after examining the History of the Reign of Elizabeth, will follow in greater detail the course mentioned above.

**Books—**

Millar's View of the English Constitution; Hallam's Chapters on the Reigns of the Stuart Kings and the Reign of William the Third; Rapin's History of the same Reigns; Clarendon's History, and May's History; The State Trials; Stephens' Blackstone; Macaulay's History, 4th vol. The Reader on Constitutional Law and Legal History will deliver his Public Lectures at Lincoln's Inn Hall, on Wednesday in each week during the Educational Term, commencing at Two P.M. The first Lecture to be delivered on the 16th of April. The Reader will receive his Private Classes on Tuesday, Thursday, and Saturday morning, at half-past Nine o'clock, in the Benchers' Reading Room.

**Equity.**

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Twelve Lectures on the following Subjects:

- I.—The Rights and Liabilities of Mortgagor and Mortgagee (continued).
- II.—The Jurisdiction of Equity to Enforce the Specific Performance of Agreements.
- III.—The Equitable conversion of Real and Personal Estate.
- IV.—The Jurisdiction of Equity over Principal and Surety.
- V.—The Jurisdiction of Equity in Cases of Accident and Mistake.
- VI.—Transactions between Parties, one of whom possesses undue advantage over the other.

The Reader will continue with his Senior and Junior Classes the general course of Equity already commenced, using, as before Smith's Manual of Equity Jurisprudence for a textbook. He will also continue in the Senior Class, and commence in the Junior to explain the leading rules of Pleading in Equity from the work of Lord Redesdale.

The Reader will deliver his Public Lectures in Lincoln's Inn Hall, on Thursday in each week during the Educational Term, commencing at Two o'clock P.M. The first Lecture to be delivered on the 17th April. The Reader will receive his Private Classes on Monday, Wednesday, and Friday evenings, from 7 to 9 o'clock, in the Benchers' Reading Room.

**Law of Real Property, &c.**

The Reader on the Law of Real Property, &c., proposes to deliver, in the ensuing Educational Term, a Course of Twelve Public Lectures on the following subjects:

- I. The Law of Perpetuity considered in relation to—
  - (a) Limitations of Real and Personal Estate after the Failure of Issue of the Person to whom a prior Interest is limited.
  - (b) The Rule in Shelley's Case.

- (c) The Doctrine of Approximation, or Cypres.
- (d) Estates created under Powers of Appointment.
- (e) The Accumulation of Income, 39 & 40 Geo. III. c. 98.

II. The Law of Judgments, as it affects Real Property: 1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; 18 Vict. c. 15.

The Lectures to be delivered to the Private Classes will comprise the following subjects:—With the Senior Class, the Transmissibility of Powers of Sale, and the Liability of Purchasers to see to the application of their Purchase-Money, will be discussed. In the Junior Class, the Elementary Principles of the Law of Perpetuity, and the application of the Doctrine to the various modes of settling Real and Personal Property, will be explained.

The Public Lectures will be delivered at Gray's Inn Hall, on Friday in each week, at Two P.M. The first Lecture to be delivered on the 18th of April, 1856. The Private Classes will be held in the North Library of Gray's Inn, on Monday, Wednesday, and Friday Mornings, from a quarter to Twelve to a quarter to Two o'clock.

**Jurisprudence and the Civil Law.**

The Reader on Jurisprudence and the Civil Law proposes, in the ensuing Educational Term, to deliver a Course of Twelve Public Lectures on the following subjects:—

The Law of Testamentary Succession (continued from last Term)—The Principles of the Roman Law of Legacies—Ancient and Modern Contract-Law—Ancient and Modern Theories concerning Crimes and Delicts—Roman Formulary Pleading and English Common Law Pleading—The Technicalities of the oldest Roman Law compared with those of the Law of England.

The Junior Private Class will read the Roman Law of Contract, Quasi-Contract, and Delict in the *Institutiones Juris Romani Privati* of Warnkönig, and the Roman Law of Civil Process in the Fourth Book of the Commentaries of Gaius. The Senior Class will read selected Titles of the Digest, particularly such as illustrate the principles of the Roman Law of Contracts and Legacies.

The Private Classes will assemble at the Class Room in Garden Court, Middle Temple, on Tuesdays, Thursdays, and Saturdays, at a quarter to 4 p.m.; the first meeting to take place on April 22nd.

The First Lecture of the Public Course will be delivered on Tuesday, April 22nd, in the Middle Temple Hall.

**Common Law.**

The Reader on Common Law proposes to deliver, during the Educational Term commencing April 15th, 1856, Twelve Public Lectures, of which the first Six will be devoted to an Inquiry concerning Wrongs Remediable by Action; and the concluding



ing Lectures will treat of Wrongs Criminally Punishable.

The principal matters to be discussed in this Course of Lectures will be arranged as under :

#### THE LAW OF TORTS.

Lectures I. and II.—The Nature and Classification of Actionable Wrongs; Signification of the word "Duty," and of the phrase "Breach of Duty," in connection with Rights of Action *ex Delicto*.

Lectures III. and IV. will treat of Wrongs to the Person and Reputation, and especially of Actions within the operation of Lord Campbell's Acts, 6 & 7 Vict. c. 96, and 9 & 10 Vict. c. 93; and of Sir J. Jervis's Act, 11 & 12 Vict. c. 44.

Lectures V. and VI.—Of Torts to Property under Bailment, particularly of Actions against Land Carriers, Railway Companies, and Innkeepers.

#### CRIMINAL LAW.

Lecture VII.—The Principles of our Criminal Law examined, and the meaning of the word "Crime" considered.

Lecture VIII.—Of the various Tribunals which take cognizance of Criminal Acts and their Respective Jurisdictions.

Lecture IX.—Of the Indictment—its Office and Requisites.

Lectures X. to XII. will treat of the Several Species of Homicide, and the Evidence necessary to Support an Indictment for Murder or for Manslaughter. Also of Simple Larceny, and some other ordinary offences.

With his Private Class the Reader on Common Law will pursue the line of inquiry above marked out, treating *seriatim* of Civil Wrongs and Criminal Offences, with frequent references to decided cases.

In carrying out this plan he will principally make use of the following books:—*Smith's Leading Cases* (4th ed., just published); *Broom's Commentaries on the Common Law*, books iii. and iv.; and *Archbold's Criminal Pleading* (by Welsby).

The Lectures on Common Law during the ensuing Educational Term will be delivered, and the Private Classes will meet, in the Hall of the Inner Temple as under:—

The Public Lectures will be delivered in the Hall of the Inner Temple, on Mondays at 2 P.M. (The first Lecture on Monday, April 21st.)

The Private Class will be held in the Hall on Tuesday, Thursday, and Saturday mornings, from a quarter to 12 to a quarter to 2 o'clock. (The first Private Class to be held on Tuesday, April 22nd.) By Order of the Council,

(Signed) RICHARD BETHELL,  
Chairman.

Council Chamber, Lincoln's Inn,  
7th April, 1856.

Note.—The Educational Term commences on the 15th April, and ends on the 31st July, 1856.

The first Meeting of each Private Class will take place on the usual morning or evening of meeting after the first Public Lecture on the same subject.

The Lectures and Classes will be suspended after Thursday, 8th May, to be resumed on and after Monday, the 26th May.

### PROPOSED SATURDAY HALF-HOLIDAY.

Mr. LILWALL, the Honorary Secretary of "The Early Closing Association," has rendered good service to the cause in which he is so zealously and ably engaged, by publishing a Pamphlet in which the Half-Holiday Question is considered, and to which is added some Thoughts on the Instructive and Healthful Recreations of the Industrial Classes. Amongst the industrial classes may certainly be reckoned the Lawyers of all grades from the Judicial Bench down to the humblest copying clerk in an Attorney's office. Mr. Lilwall, in his preliminary remarks, notices that—

"The Saturday half-holiday has become, since it has been advocated by the Early Closing Association, and is daily becoming, increasingly popular. My desire is to give an additional impetus to this movement,—the importance of which cannot, I think, well be over-rated, and to submit certain suggestions with a view to turning the additional leisure, where gained, to a profitable account.

"It is at length pretty generally admitted, that excessive labour has been, almost up to the present time, one of the monster evils of this country. We have, as a people, allowed ourselves to be engrossed by the occupation of money-getting, to the neglect of pursuits of a more refined and elevated character. The folly of this should have been obvious enough; yet, notwithstanding, until a comparatively recent period, it was no uncommon thing to hear this immolation at the foot of the golden calf eulogised as something laudable. Of all morbid desires, that for the accumulation of wealth is ordinarily one of the most insatiable. Each new acquisition too often only increases the thirst for more. Carried away by this feverish passion, men have foolishly sacrificed to the procuring an undue amount of that which is, at best, but the mere means of living, the great and glorious purposes for which life was given; and, indeed, the very capacity itself for true happiness, even of a temporal character. In the beautiful language of Tupper,

" \* \* \* Many in hot pursuit have hasted to the goal of wealth,  
But have lost, as they ran, those apples of gold,  
The mind and the power to enjoy it."

Whilst treating their cattle consistently with the laws of their nature, but forgetting that the human frame is similar in its organization, employers have been too much accustomed to act towards themselves and those in their service as though they were composed not of flesh and fibre, but of wood and iron, allowing their respective families to grow up destitute of a father's superintendence and care, and wearing

out themselves and their dependants long before the allotted period of human life.

"This system has been attended with lamentable consequences to all exposed to its sway, robbing them of their health, perverting their every social and generous feeling, crushing all noble aspirations, assisting to crowd our madhouses, and consigning thousands yearly to a premature, and all but necessarily unprepared-for, grave. It must have been so, involving, as it has, a direct violation of God's moral and physical laws, all of which say in effect, 'Thus far shalt thou go, and no farther.'

"Thanks, however, to the valued assistance of the *Pulpit* and the *Press*, so kindly extended to the Early Closing Association, the public are gradually becoming awakened to a sense of this evil. It is also due to *Employers* to say, that they too, as a body, at length, more or less admit the system in question to be one of the greatest curses which afflict the trading classes. "The practical effect of this conviction,—that excessive labour, whether mental, physical, or both conjoined, is attended with these disastrous results,—has been a marked improvement in the hours of suspending business more or less in its every department, although very much yet remains to be achieved ere the reformation in question can be affirmed to be complete."

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

### House of Lords.

Marriage Law Amendment.—Earl of St. Germans. *Negatived.*

Clergy Offences.—Bishop of Exeter. For 2nd reading.

Divorce and Matrimonial Causes.—Lord Chancellor. For 2nd reading.

Mercantile Law Amendment.—Lord Chancellor. Consideration of Amended Bills. May 2.

County Courts Act Amendment.—Lord Chancellor. For 2nd reading.

Charitable Uses. For 2nd reading, May 2.

Leases and Sales of Settled Estates, *passed.*

### House of Commons.

Leases and Sales of Settled Estates. For 2nd reading, May 9.

Law of Partnership (No. 2).—Mr. Lowe. For 2nd reading, May 2.

Joint-Stock Companies.—Mr. Lowe. Re-committed, with amendments, May 2.

Shipping Tolls, &c., Abolition.—Mr. Lowe. In Select Committee.

Judgments, Execution, &c.—Mr. Cranford. For 2nd reading, May 8.

Amendment of Procedure and Evidence.—Sir F. Kelly. For 2nd reading, May 8.

Court of Probate of Wills and Grants of Administration.—Solicitor-General. For 2nd reading, May 2.

Ecclesiastical Courts.—Mr. Collier. For 2nd reading, May 5.

Testamentary Jurisdiction transfer to distinct Court.—Mr. Mullings, after Easter.

Bills of Exchange and Promissory Notes (consolidation).—Sir F. Kelly.

Drafts on Bankers. *Passed.*

House of Lords Appeals.—Mr. Bowyer.

Obsolete Statutes' Repeal.—Mr. Locke King.

Oath of Abjuration.—Mr. Milner Gibson. In Committee, May 2.

Property Qualification.—Mr. Murrrough.

Poor Removal.—Mr. Bouverie. For 2nd reading, May 2.

Minister of Justice Department.—Mr. Napier.

Church Rates Abolition.—Sir W. Clay. In Committee, May 2.

Church Rates.—Marquis of Blandford. For 2nd reading, May 21.

Amended Formation of Parishes.—Marquis of Blandford. Re-committed for May 1.

Advowsons.—Mr. Child. For 2nd reading May 21.

Reversionary Interests of Married Women.—Mr. Malins. For 3rd reading, May 8.

Specialty and Simple Contract Debts.—Mr. Malins. For 2nd reading, May 22.

Tithe Commutation Rent Charge.—Mr. R. Phillimore. For 2nd reading, May 7.

Salaries of County Court Judges.—Mr. Roebuck.

Fire Insurances. For 2nd reading, May 2.

Medical Profession.—Mr. Headlam. In Select Committee.

Medical Qualification and Registration.—Lord Elcho. For 2nd reading.

Trust Property Criminal Appropriation.—Attorney-General.

County and Borough Police.—Sir G. Grey. Re-committed with Amendments, May 2.

Public Prosecutors.—Mr. J. G. Phillimore. In Select Committee.

Offences against the Person (consolidation).—Sir F. Kelly.

Aggravated Assaults.—Mr. Dillwyn. For 2nd reading, May 7.

Summary Jurisdiction of Justices of Peace.—Mr. Locke King. For 2nd reading, May 8.

Circuit of Judges.—Mr. Collier.

Grand Juries, &c.—Mr. Locke King.

Qualification of Justices of the Peace.—Mr. Colville. In Committee, May 5.

Metropolis Management Local Act Amendment.—Attorney-General. In Committee, May 9.

London Corporation.—Sir G. Grey. For 2nd reading, May 9.

## ADMISSION OF SOLICITORS.

THE Master of the Rolls has appointed Thursday, the 8th May, 1856, at the Rolls Court, Chancery Lane, at 4 in the afternoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Wednesday, the 7th May instant.

## SELECTIONS FROM CORRESPONDENCE.

### COUNSEL QUASI ATTORNEYS.

A GENTLEMAN, several years ago, carried on a considerable business in a large manufacturing town, in conjunction with a partner, as attorneys. He subsequently dissolved the partnership, and in due time was, several years ago, called to the Bar where he now practises; and yet the business of attorneys, of considerable extent, is still carried on in the joint names.

Is not this *infra dig.* in the barrister but quondam attorney, if not improper? Certainly such things ought not so to be.

The matter may be worth the consideration of the Law Society. I doubt whether some notice should not be taken of it.

26th April, 1856.

M. A.

### PARTNERSHIP OF ATTORNEYS. — OVERDRAWING SHARE.

A. and B. are partners as attorneys, and the articles of partnership stipulate that each partner is to draw 40*l.* a month. A. draws on several occasions a sum exceeding that amount. but on three subsequent occasions B. *draws with his own hand* sums of 250*l.*, 300*l.*, and 100*l.*, and pays the amount to the private accounts of *himself and his partner*. The question is, are such payments a waiver of the previous infraction of the articles?

April 25, 1856.

CLERICUS.

[The Letters of B.; "*Amicus*;" and J. W. L., are unavoidably postponed.]

## NOTES OF THE WEEK.

### RESULT OF THE EASTER TERM EXAMINATION.

THE printed Lists for this Term comprised the names of 83 Candidates, but a considerable number to be examined were not included in the Admission Lists, the total being 116. Of these not more than 93 completed their testimonials. The Examiners met on Tuesday; viz.—Master Gordon, Mr. Bolton, Mr. Cookson, Mr. Leman, and Mr. Murray. Five of the Candidates did not attend; and the result has been that 77 were passed and 11 postponed.

### INCREASE OF ATTORNEYS.

Under the head of "*Plague of Locusts*," the caterer for the *Morning Chronicle* of 24th April states, that "on Tuesday notices required by the Act were given in the Court of Queen's Bench to the number of 239 to be placed on the Roll of Attorneys, already numbering upwards of 10,000."

The proprietors or editor should employ some person to collect accurate information

on these subjects. Instead of an increase of 239 to the present number of Attorneys, the actual number examined this Term was 88! The number of Attorneys has not increased during the last 10 years more than one in a thousand, although both the wealth of the country and its population has increased nearly 15 per cent., or 150 per thousand. There is consequently a decline in the number of Attorneys, occasioned, no doubt, by the decrease in their emoluments."

### JUSTICES OF THE PEACE QUALIFICATION BILL.

We are informed that Mr. Colville, who was brought in this Bill, has acceded to the amendment proposed in the petition of the Incorporated Law Society,—enabling Attorneys and Solicitors to be County Magistrates, but precluding them (as was proposed) from acting in any County where they or their partners carry on business, either at the General or Petty Sessions or before any Justice of the Peace. We understand also, that the Government have no objection to this amendment, as so modified.

### NOVEL CONTRACT BETWEEN SOLICITOR AND COUNSEL.

"A Country Solicitor of rather extensive Coveyancing Practice, is desirous of agreeing with a safe and experienced Barrister for the perusing of his Abstracts and drawing his Drafts, both complicated and simple, and will be glad to communicate confidentially on the subject with any Gentleman who will address A. E. (No. 682), *Law Times Office*, 29, Essex Street, Strand."

[Is this to be a partnership between the Solicitor and the Barrister? or is the Barrister to be paid a fee in gross, and the Solicitor apportion it amongst his clients? What next?]

### SATURDAY HALF-HOLIDAY.

At 10 minutes past 3 o'clock on the 26th April, Lord Campbell inquired whether any gentleman had any motion to make. As no one rose, his lordship and the other Judges rose from their seats, and Mr. Ching, the chief usher, made the usual proclamation of "Void the bar."

Lord Campbell and the other Judges of this Court are known to all the world as delighting in hard work, but we trust that this first step in the right direction, though a small one will not be without its effect, not only as an example, but also as a precedent for a further advance in the same direction. We happen to know that it was most cordially appreciated by the Bar, whose gratitude in this matter is not

unlike that of the politician, which consisted in "a lively expectation of benefits to be received."—From the *Times* of 28th April.

## COMMON PLEAS SITTINGS.

This Court did not sit on the 26th April, their Lordships being in the Court of Criminal Appeal in which Court it was announced that judgment would be delivered on Saturday next in those cases which were then standing over for judgment.

## EXCHEQUER OF PLEAS.

This Court rose at 2 o'clock on the 26th April, in consequence of the absence of counsel in several cases in the New Trial Paper. At its rising,

The Lord Chief Baron said, that as this was the second occasion on which this Court had inadequately employed the day for the same reason, he wished to give notice that on Tuesday Mr. Baron Martin would attend, when the Court would dispose of those cases in the New Trial Paper in which Mr. Baron Bramwell had been engaged as counsel, and that after those were heard the cases would be peremptorily taken in their order. If the parties should fail to appear in any case, the Court would read the report and decide the point as best they might, leaving the parties to their appeal, if any existed, it being determined that no excuse for the absence of counsel would be accepted.

Mr. Baron Alderson.—The Judges are in attendance ready to do their work, and it is a great shame that the suitors should be delayed in this way.—From the *Times* of 28th April.

## LAW APPOINTMENTS.

Thomas Sydenham Clarke, Esq., Barrister-at-Law has been appointed a Justice of the Peace for the Liberties of the Cinque Ports.

Mr. Philip Hitchen Palmer, Solicitor, Norwich, has been appointed Deputy Coroner for the Norwich District of the County of Norfolk.

Mr. John Michael Blagg, Solicitor, has been appointed Clerk to the Commissioners of Land and Assessed Taxes for the newly formed division of Cheadle, Staffordshire.

Mr. E. Grey has been appointed Second Assistant to the Accountant-General to the Government of India.—*Civil Service Gazette*.

The Queen has been pleased to appoint Francis Offley Martin, Esq., William Davey Boase, Esq., and John Simons, Esq., to be additional Inspectors for the purposes of the Charitable Trusts Acts.

The Queen has been pleased to confer the honour of Knighthood upon William Henry Holmes, Esq., of the Civil Service, British Guiana.—From the *London Gazette* of 22nd April.

The Queen has been pleased to appoint Alan Ker, Esq., now Chief Justice of the island of Nevis, to be Chief Justice of the island of Dominica; and David Cameron, Esq., to be Chief Justice of Vancouver's Island.—From the *London Gazette* of 29th April.

John Reilly, Esq., son-in-law of Lord St. Leonards, and formerly Secretary to the Master of the Rolls, has been appointed Deputy Keeper of the Rolls in Ireland, in the room of Mr. Robert Wogan, resigned.

Mr. W. R. C. Smith, son of the Master, has succeeded Mr. Reilly as Secretary to the Master of the Rolls in Ireland.—*Times*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

*Martineau v. Rogers.* April 26, 1856.

WILL.—CONSTRUCTION.—LIFE INTEREST IN LEGACY.

*A testator, by his will, gave a sum of money to each of his two nephews if they should respectively survive and attain the age of 21, when the legacies were to be paid. In case of the death of either of such nephews leaving issue, such issue to take the parent's legacy as by his will directed; if no will equally; but in case of the death of either of his nephews before his legacy was payable his legacy to go to the survivor: Held, that, on both the nephews attaining 21 but having no issue, they were only entitled to the income of the legacies for life.*

THE testator, by his will, dated March 20, gave 2,000*l.* to each of his two nephews, if they should respectively survive and attain the age of 21 years, when the legacies were to be paid. In case of the death of either of his and nephews leaving issue such issue to take

the parent's legacy, as by his will directed; if no will, equally; but in case of the death of either of his said nephews before his legacy was payable his legacy to go to the survivor of his said nephews. It appeared that both the nephews had attained 21 but had no issue, and the question now arose on this special case under the 13 & 14 Vict. c. 35, as to the interest they took under the will.

*Elmsley and Boyle* for the nephews; *Daniel and Pigott* for the trustees.

The Court said, that the nephews were only entitled to the income of the legacies for life.

*In re Palmer, ex parte Crabbe and another.*  
April 26, 29, 1856.

BANKRUPTCY.—JURISDICTION OF COURT OF APPEAL, ALTHOUGH NO ORDER OF ADJUDICATION.

Held, that the Court of Appeal in bankruptcy has jurisdiction under the 12 & 13 Vict. c. 106, s. 12, to hear an appeal on the merits, although the Commissioner has not made an order of adjudication, and to declare whether on the evidence the Com-

*missioner should have made such order, and if the evidence be sufficient, then to remit the case back with a declaration to that effect.*

THIS was an appeal from the decision of Mr. Commissioner *Belguy*, of the Birmingham District Court, refusing to adjudicate as bankrupt under the 12 & 13 Vict. c. 106, s. 69, William Palmer, a surgeon and apothecary, who had been taken into custody under a *ca. sa.* and subsequently removed under a coroner's warrant on a charge of felony. The question was raised, on a previous hearing before the Lords Justices (reported *ante*, vol. 5), p. 350), and reserved for the consideration of the full Court, whether this Court had jurisdiction under s. 12, which enacts, that "the Court, in the exercise of its primary jurisdiction by virtue of this Act, shall have superintendence and control in all matters of bankruptcy, and shall hear, determine, and make order in any matter of bankruptcy whatever, so far as the assignees are concerned, relating to the disposition of the estate and effects of the bankrupt,—or of any estate or effects taken under the bankruptcy and claimed by the assignees for the benefit of the creditors,—or relating to any acts done or sought to be done by the assignees in their character of assignees by virtue or under colour of the bankruptcy,—and also in any matter of bankruptcy whatever as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the Court; and also in any application for a certificate of conformity, and in any other matter (whether in bankruptcy or not) where the Court by virtue of this Act has jurisdiction over the subject of the petition or application, save and except as may be by this Act otherwise specially provided,—and subject in all cases to an appeal to such one of the Vice-Chancellors of the High Court of Chancery as the Lord Chancellor shall from time to time be pleased to appoint to sit in bankruptcy." *De Ges* for the bankrupt.

The Court (without calling on *Daniel* and *A. Smith* for the petitioners) said, that the hearing of the appeal on the merits ought to proceed. And in giving judgment (April 29) on the remaining points of trading and act of bankruptcy, said that the Court of Appeal had full jurisdiction to declare whether in their opinion, upon the evidence, the Commissioner could have made an adjudication, and to remit the matter to him with a declaration if the evidence was thought sufficient.

**Vice-Chancellor Kindersley.**

*In re London, Birmingham, and Buckinghamshire Railway Company, ex parte Viscount Curzon.* April 24, 1856.

**WINDING-UP ACT.—POWER OF MASTER TO REVIEW PREVIOUS DECISION OF HIS PREDECESSOR IN OFFICE.**

*Held, that the Master has power, irrespective of the 12 & 13 Vict. c. 108, s. 17, under the 68th Order of April 3, 1828, to*

*review his own decision or that of his predecessor in office, as to the liability of a person to be a contributory generally and not with a qualification, and although no new facts are brought forward.*

THIS was a motion to reverse the decision of Master *Richards* that he would reconsider and review the finding of Master *Kindersley* in 1851, placing the name of Viscount *Curzon* on the list of contributories in respect only of any liability incurred on the particular day when he was present at and was elected a member of the managing committee. It was now sought to make the appellant generally liable, and the Master had held he was bound to review the former decision in accordance with *Spottiswoode's case*, 3 Eq. Rep. 681.

*Glassey* and *De Ges* in support; *Rosburgh* for the official manager; *Greene* for contributories, contra, referred to the 12 & 13 Vict. c. 108, s. 17, which enacts, that "it shall be lawful for the Master from time to time to reconsider and review any order or proceeding which may have been made by or may have taken place before him under the said Act, upon such terms and in such manner as he thinks fit."

The Vice-Chancellor said, that, irrespective of the Winding-up Acts, the Master had power under Order 68 of April 3, 1828,<sup>1</sup> upon special grounds, to review his own decision or the prior one of another Master in the same office. Nor was it necessary for that purpose that any new facts should be brought forward, or to show that a different view had been taken of the existing law, but he was justified under the order in deciding that he would reconsider a former decision if he thought the matter had not on the former occasion been properly presented. The motion would therefore be refused, without costs,—the costs of the official manager to come out of the estate.

*Chantler v. Easton.* April 24, 1856.

**ORDER FOR RECEIVER.—REFUSAL OF PARTY TO ACT.—PRACTICE.**

*Upon the party named in an order as a receiver declining to act, held, that the substitution of the name of another person should be obtained by summons at Chambers and not by motion to vary the order.*

THIS was a motion to vary an order for the appointment as receiver of an estate, by naming another person in lieu of the party appointed, who had declined to act.

*Welford* in support; *Speed* and *Crouch* for other parties.

The Vice-Chancellor said, that as parties *set*

<sup>1</sup> Which directs, that "no warrant to review any proceeding in the Master's office shall be allowed to be taken out, except by permission of the Master, upon special grounds to be shown to him for that purpose; and the costs of such review, when allowed, shall be in the discretion of the Master, and shall be paid by and to such persons and at such time as he shall direct."

*sui juris* might be interested the order should be carried out by summons at Chambers.

*Blandell v. Blandell.* April 28, 1856.

**WILL.—CONSTRUCTION.—APPOINTMENT UNDER POWER.—VOID CONDITION.**

*A testator having a power to appoint by will among all his children at such ages, not being after 21 years from his death, by his will appointed under the power among all his children except two, who had become nuns, and he declared that any child for the time being entitled to any share of the trust funds becoming a nun, should not be entitled to any part thereof. All the children had attained 21 at the testator's death, but one, afterwards contemplated becoming a nun: Held, that the condition was void as to her, and that she was entitled to her share.*

THE testator, having power under his marriage settlement to appoint certain moneys among all his children, at such ages not being after 21 years from the time of his decease, as he should appoint, by his will appointed in pursuance thereof the funds amongst all his children except Catherine and Clementina, who had become nuns, and he declared that no child or children for the time being entitled under any of the trusts contained in his will who should embrace a religious life by joining any religious community, should be entitled to any part of the trust fund. It appeared that there were six children surviving at the testator's death (including the two who were excluded from the trust), all of whom had attained the age of 21, and that Anna Maria, one of them, had received her share from the trustees, and the question now arose, upon her intending to become a nun, whether such share was repayable to the trustees.

*F. Riddell, H. M. Riddell, and Turner, for the several parties.*

The Vice-Chancellor said, that as she had attained 21 she had an absolute vested interest in the sum payable under the execution of the power, and that the condition was therefore inoperative against her.

*Vice-Chancellor Stuart.*

*In re Royal Bank of Australia, ex parte the Official Manager.* April 24, 1856.

**CHARGING ORDER ON INSURANCE SHARES FOR CALL ON CONTRIBUTORY.**

*An order was made absolute under the 1 & 2 Vict. c. 110, ss. 14, 18, charging certain shares in an insurance company standing in the name of a contributory with the payment of the balance due on an order for a call made by the Master on her towards the liabilities of a company which was wound-up under the 11 & 12 Vict. c. 45, but subject to any lien of the insurance company.*

THIS was a motion under the 1 & 2 Vict. c.

110, s. 14,<sup>1</sup> to make absolute an order charging 400 shares in an insurance company, standing in the name of a contributory to the above bank, with the payment of the balance due from her on an order for a call made by the Master on her towards the liabilities of the concern.

*Roxburyh*, for the official manager, in support; *Malins*, for the insurance company, claimed a prior lien.

The Vice-Chancellor granted the motion, but without prejudice to any question of priority of lien claimed by the insurance company.

*Court of Queen's Bench.*

*Powles v. Hyder.* April 17, 25, 1856.

**MASTER AND SERVANT.—CAB PROPRIETOR'S LIABILITY FOR LOSS OF PASSENGER'S GOODS BY DRIVER'S NEGLIGENCE.**

*Held, discharging a rule to set aside verdict for a plaintiff, and enter it for the defendant, that a cab proprietor is liable to a passenger for the loss of his goods through the negligence of the driver, whatever may be the arrangement as to the mode in which such driver is remunerated.*

THIS was a rule nisi to set aside the verdict for the plaintiff and enter it for the defendant, in this action which was brought to recover from a cab proprietor the value of certain goods lost by the plaintiff whilst riding in his cab, through the negligence of the driver. It appeared on the trial before Lord Campbell, C. B., that the defendant received 14s. 6d. per day from the driver for the use of the cab and two horses, which he fed, but that the driver kept all the money he earned beyond that sum.

*Hugh Hill* showed cause; *Bovill* and *Holland* in support.

*Cur. ad. vult.*

The Court said, the question was, whether the driver could be considered, under the circumstances, as the defendant's servant, so as to render him liable for the driver's negligence. If the driver had been paid by wages, there

<sup>1</sup> Which enacts, that "if any person against whom any judgment shall have been entered up in any of her Majesty's Superior Courts at Westminster shall have any "stock or shares of or in any public company in England (whether incorporated or not) standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a Judge of one of the Superior Courts, on the application of any judgment creditor, to order that such "shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon," &c.; and s. 18 provides, that "all decrees and orders of Courts of Equity," "whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, shall have the effect of judgments in the Superior Courts of Common Law."

could have been no doubt on the subject, and the mode in which he was here remunerated made no difference. They must be considered as employer and employed, as master and servant. The 1 & 2 Wm. 4, c. 22, s. 20, and the 6 & 7 Vict. c. 86, showed the driver was the servant of the proprietor, and it would be most injurious to the public if the proprietor could, by a secret agreement as to the mode in which his driver was to be remunerated and his earnings to be divided, defeat an action brought against him for his servant's negligence. The rule would therefore be discharged.

*Benson v. Paull.* April 26, 1856.

COMMON LAW PROCEDURE ACT, 1854.—  
MANDAMUS.—SPECIFIC PERFORMANCE OF  
CONTRACT.

*Held, that a mandamus will not be granted under the 17 & 18 Vict. c. 125, s. 68, for the specific performance of a contract entered into by the defendant to accept a lease and sign a counterpart.*

THIS was an action under the 17 & 18 Vict. c. 125, s. 68, for a mandamus for the specific performance of a contract entered into by the defendant to accept a lease and sign a counterpart. The defendant demurred.

*Loss in support; Bowill, contra.*

The Court said, that the section of the Act did not extend to any matter where the duty to be enforced arose out of a mere obligation to perform a personal contract. If it did, it would equally apply to every case where there was a duty following from any matter in which a party might be personally interested. It never could have been the intention of the Legislature to confer on the Courts of Common Law a power which could not be satisfactorily exercised so as to insure equity being done between the parties. It seemed that the section only intended to extend the power of granting a mandamus, which was previously vested in this Court alone, to the other Superior Courts. And the defendant was therefore entitled to judgment.

**Court of Common Pleas.**

*Ward v. British Industry Life Assurance Company.* April 25, 1856.

ACTION ON POLICY.—AGENT'S RECEIPT  
OF PREMIUM AFTER FORFEITURE.—  
WAIVER.—AUTHORITY.

*Held, reversing the decision of the Lancashire*

<sup>1</sup> Which enacts, that "the plaintiff in any action in any of the Superior Courts, except replevin and ejectment, may endorse upon the writ and copy to be served a notice that the plaintiff intends to claim a writ of mandamus, and the plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested."

*County Court at St. Helen's, that in order to entitle a plaintiff to recover on a policy of insurance on his testatrix's life, he should show that the agent, who received the premiums thereon, notwithstanding the time had expired under the rules, and the policy had become forfeited, had authority so to receive the same and waive the forfeiture.*

THIS was a plaint in the Lancashire County Court held at St. Helen's by the administrator of one Ann Ward, to recover a sum of 50l. on a policy of insurance effected on her life in the defendants' company. It appeared that the policy was admitted to have been forfeited by reason of the non-payment of the premium within the period of four weeks thereby limited, but it was contended that the forfeiture was waived by the defendant's agent having accepted payment of the premium after such default. The plaintiff having obtained a verdict this appeal was presented.

*Tapping in support; Keating and M'Gee, contra.*

The Court said, that as there was no evidence that the agent had authority to waive the rule, and it was entirely a question of fact, the appeal must be allowed.

**Crown Cases Reserved.**

*Regina v. Sloggett.* April 26, 1856.

INDICTMENT FOR UTTERING FORGED INSTRUMENT.—EXAMINATION OF PRISONER IN BANKRUPTCY.

*Held, that the examination of a bankrupt under the 12 & 13 Vict. c. 106, wherein he stated he had obtained his brother to write a letter in his father's name containing a false statement as to the prisoner's capital, whereby he had procured additional credit, is admissible in evidence on an indictment charging the prisoner with forging the same knowing it to have been forged, &c.*

THIS was an indictment charging this prisoner with uttering a forged instrument knowing it to have been forged for the purpose of fraudulently obtaining goods, and on the trial before Channell, S. L., an examination of the prisoner before the Commissioner in Bankruptcy, under the 12 & 13 Vict. c. 106, was put in, in which he stated he had got his brother to write the letter in question in his father's name, containing a false statement as to the prisoner's capital, and on which he had obtained additional credit. The prisoner was found guilty, and sentenced, subject to the opinion of this Court.

*Collier for the prisoner; Coleridge for the prosecution.*

The Court said, that as the prisoner might have refused to answer the questions which did not affect his trade, dealings, or effects, the examination was properly received, and the conviction would be affirmed.

## ADVERTISEMENTS.

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FRANCIS HART DYKE, Esq., Chairman.

HENRY HULSE BERENS, Esq. Deputy Chairman.

<p>John Dixon, Esq. Sir W. M. T. Farquhar, Bart. Sir Walter R. Farquhar, Bart. Thomson Hankey, Esq., M.P. John Harvey, Esq. John G. Hubbard, Esq. George Johnstone Esq. John Labouchere, Esq. John Loch, Esq.</p>	<p>Stewart Marjoribanks, Esq. John Martin Esq., M. P. Rowland Mitchell, Esq. James Morris, Esq. Henry Norman, Esq. Henry R. Reynolds, Esq. John Thornton, Esq. James Tulloch, Esq. Henry Vigne, Esq.</p>
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#### AUDITORS.

<p>A. W. Roberts, Esq. Lewis Loyd, jun., Esq. George Keys, Esq., Secretary. Samuel Brown, Esq., Actuary.</p>	<p>Henry S. Thornton, Esq. John Henry Smith, Esq.</p>
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**LIFE DEPARTMENT.**—Under the provisions of an Act of Parliament, this Company now offers to future insurers four-fifths of the profits, with quinquennial division, or a low rate of premium without participation of profits. The next division of profits will be declared in June, 1860, when all participating policies which shall have subsisted at least one year at Christmas, 1859, will be allowed to share in the profits.

At the five divisions of profits made by this Company, the total reversionary bonuses added to the policies have exceeded £12,000.

At Christmas, 1854, the assurances in force amounted to upwards of £4,340,000, the income from the Life Branch in 1854 was more than £200,000, and the Life Assurance Fund (independent of the guarantee capital) exceeded £1,700,000.

**FOREIGN RISKS.**—The extra premiums required for the East and West India, the British Colonies, and the northern parts of the United States of America, have been materially reduced.

**INVALID LIVES.**—Persons who are not in such sound health as would enable them to insure their lives at the Tabular Premiums, may have their lives insured at extra premiums.

**LOANS** granted on Life Policies to the extent of their value, provided such policies shall have been effected a sufficient time to have attained in each case a value not under £50.

**ASSIGNMENT OF POLICIES.**—Written Notices of, received and registered.

**MEDICAL FEES** paid by the Company, and no charge will be made for Policy Stamps.

**FIRE DEPARTMENT.**—Insurances effected upon every description of property at moderate rates.

Losses caused by Explosion of Gas are admitted by this Company.

L. O. AD., MAY 10, 1856.

### BANK OF LONDON, Threadneedle

Street, and Charing Cross.

Chairman—Sir JOHN VILLIERS SHRELLY, Bart., M.P.

Vice-Chairman—JOHN GRIFFITH FRITH, Esq.

Current Accounts are received, and interest allowed on Balances.

£5 per Cent. is allowed on Deposits, with Ten Days Notice of Withdrawal on sums of £10 and upwards.

(By Order) MATTHEW MARSHALL, Jun., Manager.

BENJAMIN SCOTT, Secretary.

Threadneedle Street, April 28, 1856.

### THE ROYAL BRITISH BANK, incorpo-

rated by Charter, for transacting every description of Banking Business on the Scottish System, allows interest on the daily Balances of drawing Accounts if not under £100, and a higher rate on all deposits. The Bank grants cash credits, and makes advances to its regular customers on suitable securities, and issues, without charge, letters of credit and circular bills, payable free of commission in any town abroad, where there is a banker.

All further information may be obtained at the Chief Office, Tokenhouse Yard, or at the Strand Branch, 429, Strand; Lambeth Branch, 77, Bridge Road; Islington Branch, 97, Goswell Road; Pimlico Branch, 1, Shaftsbury Terrace, Victoria Street; Borough Branch, 60, Stones End Southwark; Piccadilly Branch, Regent Circus; Holborn Branch, 311, High Holborn, corner of Chancery Lane.

HUGH INNES CAMERON, General Manager.

### LAW GOWNS, 30s. and 42s., may be

obtained of FRANK SMITH and Co., Clerical, Academical, State, and Law Robe Makers, 31, Southampton Street, Strand, London. List of prices and directions for measurement, &c., sent on application.

### IMPORTANT to Barristers, Solicitors, and

Gentlemen connected with the Law.—J. WEBB, from the knowledge of the fact that first-rate accommodation is much wanting in and about the neighbourhood of the Inns of Court, has been induced to fit up a most comfortable Saloon on the first floor, where every article served will be of the finest quality. Café au Lait, Chocolate, Soups, Entrees, Chops, Steaks, &c. Daily and Evening Papers, Chess, Draughts, &c. Luncheons and Dinners sent to Chambers.—WEBB, Cook and Confectioner, corner of Chancery Lane, Holborn.

Valuable House Property.—Ten respectable Dwelling-houses, Princes-road, Bermondsey, Surrey.

### MR. LEIFCHILD is instructed by a

Mortgagee to SELL by AUCTION, at Garraway's on Tuesday, May 13, at 12 for 1, in one lot, those TEN very desirable RESIDENCES, Nos. 7 to 10, and Nos. 29 to 34, pleasantly situate, on the west side of Princes-road, Bermondsey, near the Spa-road Railway Station. Each house contains two parlours, three bed rooms, kitchen, and scullery with range, copper, and sink; and the water is laid on. They are now let to respectable tenants, at yearly rents amounting to £207 18s., and they are held by lease for 80 years from Midsummer, 1843, at a ground rent of £30 per annum for the whole. Particulars and conditions of sale may be had at Garraway's; of Messrs. Davidson and Bradbury, solicitors, 18, Basinghall-street; and at Mr. Leifchild's offices, 62, Moorgate-street, city.

Reigate Surrey.—An admired Freehold Estate, with residence and Land.

### MR. LEIFCHILD is instructed by the

Proprietor to SELL by AUCTION, at Garraway's on Tuesday, May 13, at 12 for 1, the above very valuable FREEHOLD PROPERTY, known as Blackstones, which is most delightfully situate near the New Church at Redhill, on a dry and elevated site, within a short distance of the Redhill and Reigate Railway Station. It comprises a substantial newly erected stone mansion, of handsome elevation, well arranged for comfort and convenience, with every necessary domestic office, laundry and dairy, &c.; garden terrace, shrubbery walks, and flower and kitchen gardens, well stocked and planted, together with entrance lodge and other buildings, garden and orchard, and two handsome enclosures of rich arable and pasture land; the whole containing about 18 acres. Blackstones is approached by a carriage drive through the land, and from its commanding elevation embraces the finest views of the surrounding picturesque country. The land tax is redeemed, and all the outgoings are very moderate. The purchaser to take the fixtures by valuation, and if he chooses the whole of the elegant and appropriate furniture and appendages; otherwise, the proprietor reserves the right of selling the same by auction on the premises. Particulars and conditions of sale may be had at Garraway's; and at Mr. Leifchild's offices, 62, Moorgate-street, city, where, only, cards to view may be obtained. Mr. Leifchild is fully authorised to treat with any gentleman for the above property by private contract.



## ADVERTISEMENTS.

**Derks.**—The Woolhampton Estate, Mansion, Park, Manors, Farms, Water Corn Mill, Residences, Accommodation Lands, &c., near Newbury, in one of the finest and most productive agricultural districts in the county.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to OFFER for SALE, at the Mart, early in the month of June, in one lot (unless an acceptable offer should be previously made by private contract), the **WOOLHAMPTON ESTATE**, together with the Manors of Woolhampton, Shalford, Midgham, and Brimpton, a fine and important Freehold Property, situate in the parishes of Aldermaston, Brimpton, Thatcham, Midgham, Wasing, and Woolhampton, in a beautiful part of the county of Berks, about five miles from Newbury and ten from Reading, intersected by the branch line of railway from Reading to Hungerford, having the advantage of a station adjoining the property, and about one hour and a half's journey from the metropolis. The estate comprises altogether about £2,100 acres (nearly the whole of which is in a ring fence) of exceedingly rich arable meadow, water meadow, pasture, and rod land, interspersed with ornamental woods and plantations. Upon an elevated part is a substantial and commodious mansion, attached and detached offices, walled gardens, &c., placed in a picturesque and nicely undulated park, studded with ornamental timber, and well adapted for a resident landlord, or a family of the first respectability. Upon the estate are two very gentlemanly residences, with offices, pleasure grounds, and gardens. Farm houses and farm buildings suitably arranged for the several occupations. A water corn-mill, driving six pairs of stones, with good dwelling-house, foreman's cottage, buildings, and garden. Also, in the village of Woolhampton, the Falmouth Arms Inn, several dwelling-houses and shops, cottages, and accommodation lands. A portion of the estate contains peat of excellent quality for ashes, which with the other grounds forms an important addition to the general annual income. The lands, a considerable portion of which have been drained, are extremely fertile, producing abundant crops of corn and roots, and the meadow and pasture are of first-rate quality. The soil is exceedingly dry and healthy, and will carry sheep at all periods of the year, and the tenantry are highly respectable. Fox hounds are kept in the immediate vicinity. The rivers Kennett and Auburn afford excellent and extensive fishing. The estate is admirably adapted for the preservation of game, and there are few properties more calculated for occupation and enjoyment, combined with sound and permanent investment. The gross rental and value, independently of the mansion, offices, gardens, shooting, and fishing, may be fairly estimated at about £3,600 per annum. The estate may be viewed on application to Mr. James H. Howard, the resident agent, and particulars, with plans shortly had at the Bear, Reading; White Hart, Newbury; of Messrs. Gregory, Skirrow, and Rowcliffe, solicitors, Bedford-row; of P. Sinclair, Esq., 28, Southampton-row; of Messrs. Clutton, Whitehall-place; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

Upper Belgrave-street, Lowndes-street, and Halkin-terrace, Belgrave-square.—Valuable and well-secured Improved Rentals and Ground Rents, amounting together to £375 per annum.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE by AUCTION, at the Mart, on Friday, May 16, at 12, in lots, the following valuable LEASEHOLD INVESTMENTS, viz., a well-secured Improved Rental of £190 per annum, arising from the capital and substantial town mansion, with offices, coach-house, stabling, &c., situate 5, Upper Belgrave-street, opposite Eaton-place, Belgrave-square, held upon lease for the residue of a term of 55 years and 10 days from Christmas, 1838, at a peppercorn rent, and underlet for the whole term, less 10 days, to Thos. Cubitt, Esq., at a net rental of £190 per annum. The residence is now occupied by Sir Cornwallis Ricketts, Bart., and the rack rental value of the property is about £450 per annum; a well-secured Improved Leasehold Ground Rent of £180 per annum, arising from the capital town mansion in the occupation of Viscount Chelsea, situate 28, Lowndes-street, Belgrave-square, at the corner of Cadogan-place; four excellent Residences adjoining, being 24, 25, 26, and 27, Lowndes-street, and stabling and coach-houses in the rear, with entrance from Sloane-street, held upon lease for the residue of a term of 67½ years, less five days, from Michaelmas, 1816, at a peppercorn, and underlet for the whole term, less 15 days, to Thos. Cubitt, Esq., at a ground rent of £180 per annum, the rack rental value of the property being about £1,000 per annum; and a well-secured Ground Rent of £5 per annum, arising from 1 to 6 inclusive, Halkin-terrace, Belgrave-square, held upon lease for the same term as the last described property, and underlet for the whole term at £5 per annum. May be viewed only by permission of the respective tenants, and particulars had of Messrs. Delmar and Wynne, solicitors, Lincoln's-inn-fields; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

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**Preliminary Advertisement.**—The Twinstead Estate, near Sudbury, and on the borders of Suffolk.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, in the latter end of June, in lots, the **TWinstead ESTATE**, a valuable property, chiefly freehold, situate in the parishes of Twinstead, Great Henny, Lamarsh, Alphanstone, Bulmer, Schmarsh, Wickham, St. Paul, Geslingthorpe, and Little Maplestead, in the county of Essex, about four miles from Sudbury, where there is a branch station from the London and Colchester line of railway. The property consists of about 750 acres of land, partly in ornamental park and pleasure-grounds nicely studded with oak and forest timber, the remainder in useful arable, meadow, and pasture land. In the midst of the park, and close to a very pretty and rural church, is a comfortable residence, which, by a moderate outlay, might be easily adapted for the occupation of a gentleman, with walled gardens and pleasure grounds, excellent stabling and loose boxes; there are also farmhouses, farm buildings, and labourers' cottages, adapted for the various occupations, and the rental value, including the woods, but exclusive of the residence and offices, and general enjoyment of an estate admirably adapted for sporting, may be fairly taken at about £1,000 per annum. A more general advertisement, showing the arrangement of the lots, will appear shortly. Particulars, when ready, may be had at the Crown, Sudbury; Cups, Colchester; White Hart, Brentwood; Black Boy, Chelmsford; of Messrs. Currie, Woodgate, and Williams, 23, Lincoln's-inn-fields; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

In Chancery.—"Jackson v. Addis."—Cole's Wharf, Shad Thames.—Valuable Suffrage Wharf and Bonding Warehouse, occupying an area of nearly 14,000 square feet.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, in the month of May instant, in one lot, pursuant to a Decree of his Honour the Master of the Rolls, made in a cause of "Jackson v. Addis and others," a very valuable and important LEASEHOLD PROPERTY, comprising the extensive warehouses, wharf, and premises known as Upper Coles-wharf, situate at Shad Thames and New-square, in the parish of St. John, Southwark, in the county of Surrey. The property consists of a wharf, with frontage to the river Thames of 65 feet, three most substantial stacks of warehouses of four floors each, one of two floors, with cellars, shed, &c.; the entire premises extending about 216 feet in depth, and occupying an area of about 14,000 superficial feet. They are let to Mr. John Addis, who has held them for nearly thirty years, at £617 9s. per annum, and are held upon lease for about 53 years unexpired, at ground rents amounting to £88 9s. per annum. The day of sale will be mentioned in future advertisements. May be viewed by permission of the tenant, and particulars, with plans had 21 days prior to the sale, of Messrs. Clutton and Ade, solicitors, 48, High-street, Southwark; of C. Ewens, Esq., solicitor, 61, Moorgate-street; M. Turner, Esq., solicitor, 47, Lincoln's-inn-fields; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

Stoke St. Mary, near Taunton, in the county of Somerset.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, on Friday, June 6, at 12, a valuable FREEHOLD ESTATE, situate in the Parish of Stoke St. Mary, and close to the village, about three miles from the capital market town of Taunton, in a beautiful part of the county of Somerset. It consists of a substantial farm-house, barn, stabling, sheds, and all necessary agricultural buildings, the whole in an excellent state of repair, together with several enclosures of productive arable, meadow, pasture, and wood land, let on lease to a most respectable tenant at a moderate rental of £170 per annum. May be viewed, and particulars with plans shortly had at the Castle, Taunton; Globe, Bridgewater; of Messrs. Lethbridge and Mackrell, solicitors, 25, Abingdon-street, Westminster; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

The valuable Adwoson and Next Presentation to the Rectory of Kingsnorth.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, on Friday, June 30, the valuable ADWOSON and NEXT PRESENTATION to the RECTORY of KINGSNORTH, situate about two miles from the town of Ashford, in the county of Kent, consisting of a very comfortable rectory-house in the village of Kingsnorth, close to the church, with gardens and glebe land, containing about 23 acres; also the tithes of the parish, which have been commuted at £645 per annum. The age of the present incumbent is about 60. May be viewed by permission of the incumbent, and particulars had of Messrs. Smith and Allison, solicitors, Warrford-court, Throgmorton-street; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

L. O. AD., MAY 10, 1856.

## ADVERTISEMENTS.

The Kingsnorth Estate, near the improving town of Ashford, in the county of Kent.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, on Friday, June 20, at 12, in lots, the **KINGSNORTH ESTATE**, a valuable freehold property, situate in the parishes of Kingsnorth, Ashford, Shadoxhurst, Warehorn, and Orlestone; about two miles from the rapidly increasing and improving town of Ashford, in the county of Kent, and about the same distance from the Ashford station on the South-Eastern Railway: It extends over upwards of 1,100 acres of arable, meadow, pasture, and wood land, with farm-houses, farm buildings, cottages, &c., and produces, at the present moderate rentals, about £1,200 per annum. The arrangement of the lots will be as follows:—Lot 1. The Court Lodge Farm and Magpie's Hall Farm, bounded and intersected by capital roads, the greater portion laid down in pasture, and tile drained, with fine old farmhouse, farm buildings, cottages, and numerous enclosures of arable, meadow, and pasture land, containing, together, 385a. 2r. 11p., principally in the occupation of Mr. Back, a highly-respectable tenant, and Mr. Goodwin. Lot 2. The Pound Farm, close to Kingsnorth Church, and adjoining lot 1, with excellent farmhouse and farm buildings, and several enclosures of exceedingly good arable and pasture land, containing together 163a. 0r. 38p., in the occupation of Mr. ———. Lot 3. West Hawk Farm, a very compact little property, lying well together, and lying lately opposite lots 1 and 2, with snug farmhouse, farm buildings, and several enclosures of arable and meadow land, containing with the Brook meadows, 95a. 1r. 27p., in the occupation of Mr. John Barton. Lot 4. Three Freehold Enclosures of Marsh Land, known as Gudgeon's and Judd's-hill-fields, containing 42a. 2r. 27p., in the occupation of Mr. W. Theobald. Lot 5. Tailor's Farm, with farm cottage and farm buildings, and several enclosures of arable and meadow land, containing together 120a. 2r. 28p. Lot 6. Bromley-green Farm, with farmhouse, buildings, and several enclosures of arable and meadow land, containing together 111a. 3r. 3p., in the occupation of Mr. Goodwin. Lot 7. Horn Ash Farm, with cottages, farm buildings, and about 63a. 0r. 32p. of arable and meadow land. Lot 8. Four Enclosures of Arable Land, recently drained, and improved part of south lands, containing together 71a. 0r. 13p. Lots 9, 10, 11, 12, and 13 will consist of various accommodation Enclosures of Arable, Meadow, and Wood Land, containing 47a. 1r. 10p. May be viewed, and particulars had at the Saracen's-head, Ashford; of Messrs. Smith and Alliston, Warnford-court, Throgmorton-street; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

In Chancery:—"Evans v. Nixon and another."—Valuable Reversionary Interests.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE by AUCTION, at the Mart, on Friday, the 6th of June next, at 12 at noon, in two lots, pursuant to a decree of the High Court of Chancery, made in a cause of "Evans v. Nixon and another," with the approbation of the Judge to whose court the said cause is attached, the valuable **REVERSIONARY INTEREST IN ONE MOIETY OF £121,767 8s. 7d. Bank £3 per Cent. Annuities, and £955 is id. New 33 per Cent. Annuities**; also in one moiety of freehold, copyhold, and leasehold estates, situate at Tring, Marworth, and Wigington, in the counties of Herts and Bucks, comprising Tring Manor, mansion-house, outbuildings, gardens, and Sark Hastol, Mewell Parsonage, Sark-hill, Shire-lane, Great and Little Longmarston, Gamuel, Tring, Grange Parsonage Bottom, Great and Little Wilston, the Wick or Park-hill, Dunsale, Red-house, and Gubbicote Farms, silk-mills, dwelling-houses, cottages, quit-rents, tithe rent charges, and other property, producing rentals amounting to about £5,890 per annum. Particulars of sale and conditions may be had of Mr. Thomas Brodric, Lamb-buildings, Middle Temple, London, the solicitor to the Plaintiff; of Mr. Thomas Parker, 18, St. Paul's churchyard, solicitor of the defendants; the principal hotels at Aylesbury and Tring; at the Mart; and of Messrs. Norton, Hoggart, and Trist, the auctioneers, at their office, 62, Old Broad-street, in the city of London.

Freehold Rent Charge.—Ullenhall, near Henley-in-Arden, Warwickshire.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, on Friday, June 13, at 12, a valuable **FREEHOLD RENT CHARGE** in lieu of TITHES, commuted at 55s 12s. per annum, extending over about 425 acres of land, in the township of Ullenhall, in the county of Warwick, subject to deductions for poor's rates, &c. Particulars may be had of Mr. Cooper, resident agent; and at the Swan Inn, Henley-in-Arden; the Hen and Chickens, Birmingham; the principal inns in Warwick, Leamington, and Stratford; of Messrs. Bircham, Dalrymple, and Drake, 46, Parliament-street, Westminster; Messrs. Park and Pollock, 63, Lincoln's-inn-fields; E. T. Whitaker, Esq., 11, Lincoln's-inn-fields; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

L. O. AD., MAY 10, 1866.

The Auberles Estate, on the borders of Suffolk.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, on Friday, June 6, at 12, the **AUBERLES**, a valuable Freehold Estate, situate on the borders of Suffolk, about two miles from the market town of Sudbury, where there is a branch station on the London and Colchester line of railway, and within two hours and a half's journey of the metropolis. This beautiful property extends over about 636 acres of highly productive land, bounded by capital roads, and lying nearly within a ring fence. The mansion, which is exceedingly well built, of handsome elevation, and arranged with every possible accommodation for the comfort and enjoyment of a family, is seated in a finely-timbered park of about 150 acres, ornamented with a sheet of water and luxuriant plantations, and approached by two lodge entrances; it contains upwards of 20 bed rooms for visitors and servants, with dressing room and water-closets, private apartments for the family, consisting of two sitting rooms and seven bed chambers. The reception rooms (which open on a lawn, flower garden, and terrace walk filled with American and flowering shrubs of every description, and communicating with the park) consist of library, dining room, drawing room, and billiard room opening to a beautiful conservatory, forming one entire suit of rooms upwards of 170 feet in length, with lofty ceilings, and elegantly fitted up throughout; morning room, gentleman's dressing room, bath room, &c.; the servants' offices are very numerous and good, with capital cellars; the whole abundantly supplied with fine water. Detached are stall-stabling and loose boxes for upwards of 20 horses, with coach-houses, lofts, harness-rooms, and servants' rooms. An excellent kitchen garden of nearly two acres, principally walled in, with greenhouses, hot-houses, forcing pits, &c., and an ice-house, near the lower lodge. The lands which immediately adjoin the park are divided into handsome enclosures of fine rich arable meadow and pasture, thoroughly drained, and in the highest state of cultivation, with farm-houses, farm-buildings, arranged on modern principles, labourers' cottages, &c., with woods at a convenient distance, and the estate abounds with game in every variety. The whole of the property is in hand, but there would be no difficulty whatever in letting any portion a resident owner might require, to highly respectable and responsible tenants. The rental, that may fairly be expected, would be at least £1,100 per annum, independent of the mansion-house, offices, gardens, and pleasure grounds, so that nothing can be more adapted for any gentleman requiring a moderate and elegant occupation combined with thoroughly safe investment. May be viewed by tickets only, and particulars had at the principal Inns, Sudbury; the Cups, Colchester; the White Hart, Brentwood; of Messrs. Young and Jackson, Essex-street, Strand; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

Cheapside.—Very valuable Freehold Properties, producing (at low rentals) £385 per annum.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to offer for SALE, at the Mart, in the month of June next, the following valuable and important **FREEHOLD PROPERTIES**, viz., a capital and substantial shop, dwelling-house, and offices, most eligibly situate No. 70, Cheapside, immediately opposite the Atlas Assurance office and King-street, one of the best positions in the city of London, let to Mr. Garrett, at a very low rent of £220 per annum; also two excellent shops, dwelling-houses, and offices adjoining, situate Nos. 90 and 91, Queen-street, Cheapside, let to Messrs. Hadland and Plews and Mr. Kirkpatrick, at low rents, amounting together to £165 per annum. A more descriptive advertisement will appear when the day of sale is fixed. Particulars may be had of Messrs. Wilde, Rees, Humphrey, and Wilde, solicitors, 21, College-hill; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

Cheapside.—Well-secured Net Freehold RENTAL of £200 per Annum.

**MESSRS. NORTON, HOGGART, and TRIST** have received instructions to OFFER for SALE, at the Mart, on Friday, May 23, at 12, a valuable **FREEHOLD RENTAL OF £200 per annum**, secured upon and arising out of the capital business premises and dwelling-house, situate No. 131, Cheapside. They consist of four light warehouses, which are now laid into and form part of the adjoining premises, No. 130, with dwelling-house over, containing two attics, bed room, two parlours, and kitchen, with separate private entrance. Let on lease to Messrs. C. and J. Weldon, highly responsible tenants, for an unexpired term of 33 years from Midsummer last, at a clear net rent of £200 per annum, and offering a very eligible and sound investment. May be viewed by permission of the tenants, and particulars had of Messrs. Marson, Dudley, and Marson, solicitors, 1, Anchor-terrace, Bridge-street, Southwark; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street, Royal Exchange.

# ADVERTISEMENTS.

The Barrells Estate, near Leamington, Warwick, Stratford, and Birmingham.

**MESSRS. NORTON HOGGART** and **TRIST** have received instructions to offer for SALE, at the Mart, on Friday, June 13, at 12, in 15 lots (unless previously disposed of by private contract in one lot), the **BARRELLS ESTATE**, an important and valuable freehold property, situate close to the town of Henley-in-Arden, in the counties of Warwick and Worcester, about 13 miles from Leamington, 10 from Warwick, 12 from Birmingham, and 8 from Stratford, and within three hours' journey of London. This fine estate extends over upwards of 3,040 acres of arable, meadow, pasture, park, and wood land, with the Manors of Oldberrow, Ullenhall, and Apaleigh, and is divided into farms, with farm buildings and cottages, suitable for the several occupations. The mansion, which is substantially constructed, is placed within the park, and contains four good reception rooms, with numerous bed rooms and offices, excellent walled garden, &c.; it, however, requires some judicious outlay to render it complete for the residence of a gentleman. The situation of the property is exceedingly desirable, whether as regards the markets for the sale of produce, or from its contiguity to good society and field sports of every description. The present income, which is capable of very considerable improvement, amounts to about £3,600 per annum, and should the estate not be sold previously by private contract in one lot, the mode of division will be as follows:—Lot 1, The Mansion, Park, and Oldberrow-court Farm, with farm-house and farm buildings containing together upwards of 540 acres. Lot 2, Oldberrow-hill and Boarded-house Farms, with farmhouses and buildings containing about 369 acres. Lot 3, Crowley's Farm and farmhouses and buildings, containing about 256 acres. Lot 4, Heath's farm, and part of Oldberrow-hill, with farm-house and buildings, containing about 361 acres. Lot 5, Impaley and Boxley-hill Farms, with farm-houses and buildings, containing about 306 acres. Lot 6, Great All End and Chapel-house Farms, with farm-house, farm-cottage, buildings, and cottages, containing 240 acres. Lot 7, Mount Pleasant Farm, with farm-house and buildings, beautifully situated, immediately opposite the Barrells Mansion and Park, containing about 131 acres. Lot 8, Most House Farm, with farm house and buildings, and Mockley-wood, containing together about 321 acres. Lot 9, Furdial Farm, with farm-house and buildings, containing about 168 acres. Lot 10, Beaudesert-park Farm, with good farm house and farm buildings, close to the town of Henley-in-Arden, containing about 213 acres. Lot 11, Henley Farm, close to the town of Henley-in-Arden, containing about 175 acres, with farm buildings, an old farm-house and buildings, and shop formerly used as a butcher's shop. The remaining lots will comprise the Swan Commercial Inn, a freehold residence, and other houses in the town of Henley-in-Arden, the Spur public-house, near to the Barrells Mansion, and various accommodation lots, near to the town. The whole of the lots are bounded by good roads. May be viewed by application to Mr. Cooper, who resides at Henley-in-Arden; and particulars had at the Swan Inn, Henley-in-Arden; the Hen and Chickens, Birmingham; the principal Inns in Warwick, Leamington, and Stratford; of Messrs. Birncham, Dalrymple, and Drake, 46, Parliament-street Westminster; Messrs. Park and Pollock, 63, Lincoln's-Inn-fields; E. T. Whitaker, Esq., 12 Lincoln's-Inn-fields; at the Mart; and of Messrs. Norton, Hoggart, and Trist, 62, Old Broad-street. Royal Exchange.

Reversion to a Moiety of £1,405 7s. 8d. Consols.

**MESSRS. H. BROWN** and **T. A. ROBERTS** will SELL by AUCTION, at the Mart, on Tuesday, May 13, at 12, the REVERSION to a MOIETY of £1,405 7s. 8d. Consols, standing in the names of the Trustees, receivable at the death of the survivor of a gentleman and lady, each of the age of 61 years. Particulars may be had of Wm. Tatham, Esq., 22, Throgmorton-street, and of Messrs. H. Brown and T. A. Roberts, 22, Throgmorton-street.

Leasehold Estates, held direct from the Duke of Bedford.

**MESSRS. H. BROWN** and **T. A. ROBERTS** will SELL by AUCTION, at the Auction Mart, on Tuesday, the 13th of May, at 12 o'clock, in lots, by order of the Mortgagee, desirable LEASEHOLD ESTATES, comprising those extensive premises in Bury-place and Bloomsbury-market, on lease to and in the occupation of Mr. Charles Burton, perambulator manufacturer; Nos. 9 & 10 Bloomsbury-market, in the occupation of Messrs. Grignon and Cooper; and No. 1, Market-street adjoining, let to Mr. Wood, bootmaker; also four Dwelling-houses and Shop, being Nos. 12, 14, 16, and 18, Francis-street, Tottenham-court-road, let to Messrs. Morton, Slater, Roberts, and Gianfield; the whole producing £331 per annum, and held direct from the Duke of Bedford under various leases, principally for long terms, at ground rents varying from £5 to £36 per annum. May be viewed, and printed particulars shortly had of Messrs. Sheard and Baker, solicitors, 3, Cloak-lane; and of Messrs. H. Brown and T. A. Roberts, 22, Throgmorton-street, city.

(4)

Spitalfields.—Freehold Estate.

**MESSRS. H. BROWN** and **T. A. ROBERTS** will SELL by AUCTION, at the Mart, on Tuesday, May 13, at 12, in two lots, FOUR brick-built DWELLING-HOUSES, with gardens in the rear, situate Nos. 30 to 33 (inclusive), Hunt-street, Spicer-street, Spitalfields (near the new Catholic Chapel), each containing 4 rooms, kitchen, and wash-house, and other conveniences, let to Messrs. Noquet, Craggs, Renew, and Gibbs, at rents amounting to £79 per annum. May be viewed, and printed particulars had at the Mart; of Messrs. Walker and Pemberton, 8, Southampton-street, Bloomsbury; add of Messrs. H. Brown and T. A. Roberts, 22, Throgmorton-street.

Grenada.—Valuable Sugar Estate, in a high state of cultivation.

**MR. EDWIN FOX** is directed to SELL by AUCTION, at the Mart, on Wednesday, May 14, at 12, the RIVER ANTOINE ESTATE, situate in St. Patrick's, in the Island of Grenada, containing 451 acres of very fertile land, adapted for cane or other cultivation, and at present in excellent culture, but still capable of considerable extension, with all necessary out-buildings in good order, comprising an excellent watermill, boiling and curing house, liquor loft and rum store, a spacious megass house, large cattle pens, and all necessary implements and appurtenances; excellent residences for manager, and an overseer's house. Particulars may be obtained of Messrs. H. and S. R. Lewin, solicitors, 32, Southampton-street, Strand; of Messrs. Mackenzie and Baillie, W.S., Hill-street, Edinburgh; at the Mart; and at Mr. Edwin Fox's offices, 41, Coleman-street, Bank.

Buashy, Herts, 10 minutes' walk from the Bushey Station on the North Western Railway.

**MR. EDWIN FOX** will SELL by AUCTION, at the Mart, on Wednesday, May 14, at 12, by order of the Mortgagee, a compact COTTAGE RESIDENCE, with large garden, paddock, and four small tenements adjoining (advantageously let off), situate near the town of Buashy, and known as Mead Cottages, Water-lane. The residence contains 10 rooms, with stabling, barn, &c., and is fit for immediate possession; held on lease for 191 years, at a reserved rental. May be viewed, and particulars had of H. W. Elcum, Esq., solicitor, 13, Bedford-row; and at Mr. Edwin Fox's offices, 41, Coleman-street, Bank.

Islington, Middlesex.—Long Leasehold Estate.

**MR. EDWIN FOX** will SELL by AUCTION, at the Mart, on Wednesday, May 14, at 12, in two lots, by order of the Mortgagee under a power of sale, capital LEASEHOLD PROPERTY, comprising five excellent brick-built dwelling-houses, situate and being Nos. 26, 27, 28, and 29, St. Paul's-place, near St. Paul's Church, Ball's-pond, Islington, in the occupation of respectable tenants, at rents amounting to £195 per annum; held for an unexpired term of 70 years, at the low ground rent of £2 each house. Also Nos. 8, 9, and 10, St. Paul's-terrace, Ball's-pond, Islington, let at rents amounting to £111 per annum, and held for an unexpired term of 69 years, at a ground rent. May be viewed by permission of the tenants. Particulars and conditions of sale had at the Mart; of H. W. Elcum, Esq., 13, Bedford-row; and at Mr. Edwin Fox's offices, 41, Coleman-street, Bank.

Valuable Absolute Reversion.

**MR. EDWIN FOX** will SELL by AUCTION, at the Mart, on Wednesday, May 14, at 12, the ABSOLUTE REVERSION to one-fourth part of £2,150 and £1,108 17s. 3d., New Three per Cents, standing in the names of highly respectable trustees, and payable on the decease of a gentleman, aged 77 years. Printed particulars and conditions of sale may be obtained on application to Mr. Price, solicitor, Burford; Messrs. R. Mullings, Daubeney, and Chubb, solicitors, Cirencester; of Messrs. Trinder and Eyre, solicitors, 1, John-street, Bedford-row; and at Mr. Edwin Fox's offices, 41, Coleman-street, Bank.

Chelsea.—Five neatly-built Leasehold Houses.

**MR. W. F. HAMMOND** will SELL by AUCTION, June 17 (unless previously sold), the above compact LEASEHOLD INVESTMENT, being Nos. 1, 2, 3, 4, & 5, Camera-street, Chelsea; held for a term of 30 years from June, 1856, at a ground rent of £50, and all let to very respectable tenants, producing £150 per annum.—Mr. C. Hooper, solicitor, 7, Staple-inn, Holborn; auctioneer's office, 3, Carey-street, Lincoln's-Inn.

**TO BE LET, BARRISTER'S CHAMBERS**, Furnished, Carey-street, opposite Lincoln's-Inn Gateway, a pleasant Room, furnished as a Library, including coals, candles, and cleaning. Rent, 30 guineas per annum. Can be let only to a barrister. Apply to Mr. W. F. Hammond, 3, Carey-street, Lincoln's-Inn.

L. O. AD., MAY 10, 1856

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

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— "Still attorneyed at your service."—*Shakespeare*

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SATURDAY, MAY 10, 1856.

### PROGRESS OF LAW BILLS IN PARLIAMENT.

PARLIAMENT has adjourned for the Whitsuntide holidays, but will re-assemble on the 16th instant.<sup>1</sup> According to the modern objectionable course of continuing the Session to the middle of August, there yet remain nearly three months for the debate and consideration of the numerous Bills in progress or intended to be brought forward. So far as the members of the Profession or their clients are concerned, it is incumbent vigilantly to watch the proposed alterations in the Law;—and we shall continue therefore from time to time to call attention to such of them as seem to be important.

It will be recollected that the usual protracted sittings of both Houses deprive the Profession of the services of many of the members who are engaged on the Circuits, which commence about the 10th July, so that if it should be the purpose, on either side of the House, to press forward an objectionable measure of Law Reform, the probability of success is greater when most of the lawyers have departed for the Assizes. There ought to be a time fixed for each Session, after which no Law Bills should be passed, unless of acknowledged urgency for the due administration of justice.

The recent discussions in Parliament relating to the principal Bills under consideration, were in substance as follows:—

A petition was presented on the 2nd May by Lord Brougham from the Yorkshire

Society for the Protection of Trade, in favour of the Lord Chancellor's *County Court Amendment Bill*, praying that instead of the optional clause giving the Court jurisdiction, if both parties consented, in cases where the amount exceeded 50*l.*, the plaintiff should be at liberty to bring such cases into the Court without the defendant's previous consent,—leaving the defendant to require that the case should be tried in the *County Courts*.<sup>2</sup>

The Lord Chancellor said, that the subject of the petition had received his anxious attention, and a very able paper had been prepared by one of the Commissioners, Mr. Pitt Taylor, who had framed a number of clauses, which would be introduced on the 2nd reading, when he should move that the Bill be committed *pro forma* for that purpose. We shall wait for these clauses with some curiosity, if they are intended to give jurisdiction to the County Courts beyond the sum of 50*l.* Is it proposed that the County Courts are to be "Courts of First Instance," and the Superior Courts only Courts of Appeal?

The *Mercantile Law Amendment Bill* was discussed in the House of Lords on the 2nd instant, in reference particularly to the repeal of the 17th clause of the Statute of Frauds, which requires contracts for the sale of goods above the value of 10*l.* to be in writing. It is stated by the Commissioners that in Glasgow, Liverpool, Manchester, and other places, contracts in writing are not required in the ordinary operations of trade and commerce, which are safely

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<sup>1</sup> This is the proposition of the Government, but the adjournment may extend to the 19th.

<sup>2</sup> This, we presume, is a mistake of the Reporter of the Debate, and that the *Superior Courts* were here intended.

and conveniently carried on to a great extent without the supposed protection of written agreements.

Many of the merchants of London, however, object to the proposed alteration of the law; but it was explained, in the course of the debate, that a broker could not bind his principal except so far as he was authorised, and that the merchant might direct, in writing or otherwise, how far the authority of his broker or agent, should extend. Lord Campbell concurred with the Lord Chancellor in the expediency of repealing the section in question, the cases on which had filled many volumes of reports. It will be recollected that exceptions have been introduced in the construction of the 17th section in cases where the contract has been partly executed, or where part payment has been made, and subtle distinctions have been raised to evade the provisions of the Statute. Lord Overstone and Lord Harrowby addressed the House on this topic, and ultimately the report was received and the Bill now stands for 3rd reading.<sup>3</sup>

The County and Borough *Police* Bill occupied the House of Commons for several hours on the 2nd instant, various alterations were made, and its further consideration was postponed till the 9th instant.

The difficult subject of the *Ecclesiastical Courts* has received a farther addition in the Bill just introduced by Sir Fitz Roy Kelly, an abridgement of which will be found in a subsequent page. There are now three Bills before the House:—the 1st by the Solicitor-General; the 2nd by Mr. Collier; and now 3rdly that of Sir F. Kelly. Mr. Mullings has also given notice of a Bill on the same fruitful subject. There are also rival Bills on Church Discipline and Matrimonial Causes.

The next important branch of legislation is that of the Law of *Partnership* and of Joint-Stock Companies, including the "limited liability" principle. These measures make but slow progress, but it is expected they will be matured into Statutes before the end of the Session. The Government have had some difficulties to surmount. They were indeed several times left in a minority (though on comparatively minor questions), but obtained a very satisfactory majority on the question of censure raised by the Protectionist party regarding the surrender of Kars. There may yet be prolonged discussions on the

several points of the Treaty of Peace. When that subject has been exhausted, and the Chancellor of the Exchequer's Budget (at present appointed for the 19th inst.) has passed through the ordeal of the House, we may expect that prompt exertions will be made to pass such Bills as are likely to gain credit with the public, and promote the interests of the ministry.

The Qualification of *Justices of the Peace* Bill is evidently a proper and judicious measure. At present no one can be placed in the Commission who has not 100*l.* a-year in land. A man with 5,000*l.* a-year in the funds cannot be appointed. It is proposed that 300*l.* a-year of personal property shall be a sufficient qualification. The Bill has been amended and is re-committed for further consideration on the 21st inst. The alteration proposed on the part of the Attorneys and Solicitors will, we understand, be adopted.

The *Settled Estates* Bill still lingers in the lower House, after having passed the upper; but we trust it will soon be taken up and expedited.

The complicated subject of *Church Rates*, we fear, can scarcely yet be satisfactorily settled; and connected with this measure is that of the proposed amendment in the formation of parishes.

The proposed appointment of a *Public Prosecutor*, with numerous assistant prosecutors, district agents, and official prosecuting attorneys, remains under the consideration of a Select Committee. We hope a full report will be made of the evidence and of the reasons, as well in opposition to, as in favour of the project.

The following are the stages at which the several Bills have arrived:—

#### BILLS FOR SECOND READING.

In the House of *Lords* the Bills are the Divorce and Matrimonial Causes; Clergy Offences; Charitable Uses; Drainage of Land; and Winding-up Acts Amendment.

In the House of *Commons*, the Bills in this stage are: Leases and Sales of Settled Estates; Law of Partnership (No. 2); Judgments Execution; Procedure and Evidence Amendment; Specialty and Simple Contract Debts; Wills and Administrations (Solicitor-General); Wills and Administrations (Sir F. Kelly); Ecclesiastical Courts (Mr. Collier); Poor Removal; Church Rates Abolition; Adwosons; Summary

<sup>3</sup> This questionable alteration will undergo further discussion.

Jurisdiction of Justices of Peace; London Corporation; Medical Qualification and Registration.

**IN COMMITTEE, OR RE-COMMITTED.**

In the House of *Lords*, the only Bill in this stage of progress is the County Courts Amendment Bill.

In the House of *Commons* are the following:—Oath of Abjuration; Church Rates; Amended Formation of Parishes; County and Borough Police; Qualification of Justices of the Peace; Metropolis Local Management; Sleeping Statutes Repeal.

**IN SELECT COMMITTEE.**

Shipping Tolls, &c.; Medical Profession; Public Prosecutors; Tithe Commutation Rent Charge.

In the House of *Lords*, the Mercantile Law Amendment Bills for England and Scotland.

**FOR THIRD READING.**

In the House of *Commons* the Bills in this stage are the Reversionary Interests of Married Women, on which some observations and suggestions appeared last week, and Joint-Stock Companies.

**NEGATIVED.**

Marriage with Deceased Wife's Sister; Aggravated Assaults.

**TESTAMENTARY AND MATRIMONIAL JURISDICTION BILL.**

**PROPOSED BY SIR FITZROY KELLY.**

AFTER the Preamble and Interpretation clause, it is proposed to enact as follow:—

*Testamentary* jurisdiction of Ecclesiastical and other Courts abolished; sect. 3.

*Matrimonial* jurisdiction of the same Courts abolished; s. 4.

Testamentary jurisdiction vested in new Court; s. 5.

*Matrimonial* jurisdiction vested in same Court; s. 6.

The Court to have jurisdiction over all wills; s. 7.

The Court to grant certificates of intestacy; s. 8.

Court to have equal jurisdiction with Courts of Common Law, Chancery and Prerogative Court with respect to matters within its jurisdiction; s. 9.

*As to Wills and Matters Testamentary.*

Course of proceeding in common form business; s. 10.

Sittings; s. 11.

Her Majesty empowered to appoint Judge of the Court; s. 12.

Judges of other Courts to sit with or in the absence of the Judge; s. 13.

Rank of Judge; s. 14.

Secretary, usher, and trainbearer; s. 15.

Salaries of Judge and other officers; s. 16.

Retiring pension; s. 17.

Judge may appoint persons to keep order in Court; s. 18.

Power to supply vacancies in office of Judge appointed under this Act; s. 19.

Seals of the Court; s. 20.

Establishment of testamentary office; s. 21.

District office; s. 22.

Officers of the Court; s. 23.

Power to increase number of registrars; s. 24.

Appointments to offices; s. 25.

Principal registrar; s. 26.

Qualification of future registrars; s. 27.

Officers to execute office in person; s. 28. Advocates admitted to practise as barristers; s. 29.

Admission of proctors as solicitors; s. 30.

Admission of articled clerks to proctors as solicitors; s. 31.

Solicitors and attorneys; s. 32.

Laws in force concerning attorneys and solicitors extended to attorneys and solicitors of the Court; s. 33.

Exclusive right to transact common form business in the testamentary office; s. 34.

Effect of probate taken out by executor as to real estate; s. 35.

Summons to executors, &c., to prove will of real estate. In default, grant to be made to applicant; s. 36.

Such grant not to prejudice any subsequent one; s. 37.

Devises of real estate devised by will may obtain probate of such will; s. 38.

Administration with will annexed of personal estate to have the same effect as to real estate as probate; s. 39.

Where a person dies, leaving an instrument affecting real estate, and another instrument affecting personal estate, separate probate to be granted, but in no other case; s. 40.

Unrestricted grant to be evidence that testator left no other will; s. 41.

Restricted grant to be evidence, as the case may be; s. 42.

Expense of probate to be borne by person applying for same; s. 43.

Probate to be evidence of contents of will as to real as well as to personal property; s. 44.

No person to claim as heir, &c., without certificate of intestacy; s. 45.

Certificate of intestacy; s. 46.

Orders, &c., of the Court liable to appeal; s. 47.

Probates, &c., to be obtained as in Prerogative Court; s. 48.

Affidavits to be made; s. 49.

Judge may appoint commissioners; s. 50.

Probates to be obtained in district offices; s. 51.

Reference of questions when necessary to Judge; s. 52.

Deposit of wills in country districts; s. 53.  
No probate or administration to be granted through district office, unless deceased had fixed place of abode in district; s. 54.

Affidavits conclusive; s. 55.

Option of applying to testamentary or district office; s. 56.

Note and copy of will, &c., to be transmitted from district; s. 57.

Index to be made of wills and administrations, and sent to district offices; s. 58.

Form of probate and administration; s. 59.

Official copy of will may be obtained; s. 60.

Executor or administrator within 12 months to file inventory of effects of deceased; s. 61.

In case of neglect of executor or administrator to file inventory within such period, Court on application of any person interested, may order same to be filed, with costs; s. 62.

Caveats; s. 63.

Sureties in administration bonds; s. 64.

Bond; s. 65.

Penalty on bond; s. 66.

Power to Court to assign bond; s. 67.

Pending suits: Proviso; s. 68.

Power to Judge of Prerogative Court to deliver written judgments; s. 69.

Power as to appointment of administration; s. 70.

Administration pendente lite; s. 71.

Receiver of real estate pendente lite; s. 72.

Remuneration to administrators pendente lite; s. 73.

After grant of administration, no person to have power to sue as an executor; s. 74.

Revocation or determination of temporary grants not to prejudice actions or suits; s. 75.

Court to have like control over wills, &c., as the Prerogative Court; s. 76.

Court may remove from registry or cancel a forged will, or restore a will which has been tampered with; s. 77.

Order to produce any instrument purporting to be testamentary; practice thereon; s. 78.

Issue may be tried before the Court by jury; s. 79.

Examination of parties and witnesses before the Court: Production of deeds; s. 80.

Issues may be tried at assize; s. 81.

Attesting witnesses to will may be examined *videlicet* voce: Proviso; s. 82.

New trials; s. 83.

Limitation of time of proceeding; 20 years; s. 84.

Disability; 10 years; s. 85.

Fraud; s. 86.

Void and voidable probates and administrations valid: Proviso; s. 87.

Power to make rules and regulations; s. 88.

County Court jurisdiction; s. 89.

Judges of present Ecclesiastical Courts and others, on order of Judge, to transmit all wills, &c., in their possession to testamentary or district office; s. 90.

Penalty for default; s. 91.

Power to Lord Chancellor to arrange for temporary custody of wills, &c.; s. 92.

Appointment to temporary offices; s. 93.

Power to Judge to direct registrars to discharge the duties of principal registrar during Vacation, &c.; s. 94.

Power to Judge to remove any officer appointed under this Act engaging in other employment; s. 95.

Proctors, solicitors, &c., appointed to any office under this Act to cease to be proctors, and be struck off the Rolls, as the case may be; s. 96.

Saving existing employments; s. 97.

Registrars, &c., to have power to administer oaths; s. 98.

Forging or counterfeiting seal of Court or signature of officers: Penalty; s. 99.

This Act not to affect the stamp duties on probates and administrations; s. 100.

The registrar to deliver copies of wills, &c., to the Commissioners of Inland Revenue; s. 101.

Judge to prepare table of fees to be taken by officers of Court, with power to vary the same as he may think fit, and to publish same in *Gazette*: Trials, pleadings, practice and procedure in causes matrimonial; s. 102.

No other fees to be taken; s. 103.

No officer to retain for his own use any fees; or accept gratuity: Penalty; s. 104.

Prosecution of offenders; s. 105.

Fees not to be paid in money but by stamps; s. 106.

So much of the Sutors in Chancery Relief Act as applies to the collection of fees by stamps incorporated, except that separate accounts be kept: Commissioners of Inland Revenue to retain expenses, &c., and pay residue into Bank of England, to an account "The New Court Fee Fund Account;" s. 107.

Fees to be paid to the same account; s. 108.

Acts relating to stamps under Commissioners of Inland Revenue incorporated; s. 109.

Power to Judge to provide offices, &c.; s. 110.

Salaries of officers; s. 111.

Power to Judge to remove any officer becoming infirm or incapable, and to limit retiring allowance; s. 112.

Mode of compensating retiring officers, &c. Proviso; s. 113.

Compensation; s. 114.

Proctors; s. 115.

Compensation to proctors in partnership; s. 116.

Compensation to Judge of Prerogative Court; s. 117.

Persons appointed to offices not to receive compensation while holding such offices, &c.; s. 118.

Clause for protection of the interests of the Right Honourable Charles Viscount Canterbury; s. 119.

The registry of Prerogative Court of Canterbury to vest in registrar of Court; s. 120.

Compensation to the Reverend R. Moore for building; s. 121.

How compensation to be paid; s. 122.

Time of payment of salaries, &c.; s. 123.

Power to Lord Chancellor to order surplus of New Court Fee Fund to be paid into the Exchequer: If fund insufficient to defray salaries, &c., Commissioners of the Treasury to provide for same; 124.

Short title; s. 125.

Limit of Act; s. 126.

Schedules.

It will be observed that although the Bill is designed to abolish the Matrimonial as well as the Testamentary Jurisdiction of the Ecclesiastical Courts, as shown by the 4th and 6th sections, the details of the Bill relate only to the Testamentary Jurisdiction.

## REGISTRARS OF THE COURT OF CHANCERY.

*THE* Chancery Commissioners have devoted the larger part of their Report to the consideration of the course pursued in drawing up the Orders of the Court. They state that these orders are in general drawn up in the office of the Registrars of the Court. There are now 11 Registrars and 14 Clerks to the Registrars, among whom the business of the office is distributed.

The establishment of the office is regulated by the following Acts of Parliament:—

1st. The 3 & 4 Wm. 4, c. 94 (1833), which abolished the office of registrar as it had previously existed, and created an establishment of six registrars and eight clerks. The office of registrar had become a sinecure, and its duties were performed by deputy, the officers actually performing the duties, being styled deputy registrars.

At this time there were three Courts of Chancery sitting; namely, the Court of the Lord Chancellor, the Court of the Master of the Rolls, and the Court of the Vice-Chancellor of England; so that there were two registrars for each Court. A clerk was attached to each of the registrars. The remaining two clerks not attached to any registrar were considered to be more especially under the superintendence of the senior registrar.

2nd. The 5 Vict. c. 5 (1841), which transferred to the Court of Chancery the equitable jurisdiction of the Court of Exchequer, and created two additional Vice-Chancellors.

The number of Courts sitting being thus increased to five, the Act created four more registrars and four additional clerks, and authorised the Lord Chancellor to appoint further additional clerks, which power was exercised by the appointment of two additional clerks. Thus the establishment consisted of 10 registrars and 14 clerks.

3rd. The 14 & 15 Vict. c. 83 (1851), which added a Court of Appeal in Chancery.

This Act authorised the appointment of one

additional registrar only, though an additional Court was established. We believe that it was at the time considered that one additional registrar only was required, it being thought that the Lord Chancellor and the Judges of the Court of Appeal would be rarely sitting at the same time in separate Courts. No additional clerk was appointed, but one of the four unattached clerks was attached to the new registrar, thus leaving three unattached.

*Succession in the Registrars' Office.*—Under these Acts of Parliament, whenever a vacancy occurs in the office of registrar or of clerk to the registrars, the vacancy is supplied by the registrar or clerk to the registrars next in seniority, if willing to accept the office, unless some substantial objection is made to such person, in which case the Lord Chancellor determines on the validity of the objection. This right of succession is subject to certain provisions with respect to some of the registrars and clerks to the registrars made on transferring some officers of the Court of Exchequer when the equitable jurisdiction of that Court was transferred to the Court of Chancery, but it is unnecessary to state these provisions, as they are temporary only, and do not substantially affect the principle of succession established by the Acts.

The consequence of the succession thus established in the registrars' office is that on each vacancy a clerk is appointed, who rises gradually by seniority, and many years necessarily elapse before a clerk succeeds to the office of registrar. The average period of service as clerk is stated to be 20 years.

The principle of succession by seniority has always prevailed in the registrars' office. Before the passing of the Act of 1833, the clerks were appointed by the registrars (then deputy registrars) by articles of clerkship, and each clerk so appointed continued to serve under the same registrar or his successor, or under one of the other registrars to whom he might be assigned, until he himself succeeded by seniority to the office of registrar. The clerks, instead of being appointed by the registrars themselves, are now, under the authority of the above-mentioned Acts of Parliament, appointed by the Lord Chancellor. Each person appointed must be a solicitor, or have served five years under articles of clerkship to a solicitor.

*Insufficient office room.*—The registrars and their clerks occupy a building in Chancery Lane, which was provided for the establishment when it was much smaller than at present. Few of the registrars have rooms to themselves, and the clerks all sit in one room, which is the common resort of the solicitors and their clerks having business in the office, and which is also occupied by two clerks of entries, and by the two bag-bearers attached to the registrars' office. The two junior registrars and the clerks attached to them have been unable to find room in the office, and chambers have been taken for them on the opposite side of Chancery Lane.



difficulty, because it is essential that the registrars should attend at the office as well as in Court, and if two registrars were attached to each Court, each registrar attending the Court on alternate days, there would still be a large number of cases in which the same registrar would not be present during the hearing of the cause and when judgment was pronounced. The plan of attaching two registrars to each Court was tried some years since, and failed, principally from the unequal number of orders made in the different Courts; so that while the registrars attached to some of the Courts were unable to accomplish their work, others of them had little to do out of Court. It must be observed that cases in the Appellate Courts are fewer in number and occupy a larger proportion of time in argument than those in the other Courts. They also furnish much less business for the registrar, because many of the orders appealed from are simply affirmed, others are varied, and there are few appeals in which orders are made, throwing much trouble on the registrars.

We have considered whether the difficulty might not be obviated by attaching registrars to the Courts for a limited period, but we have been unable to devise any plan for the purpose which we think likely to be successful.

On the whole, we have arrived at the conclusion that it would not be expedient to make any alteration in the existing system of attendance by rotation, as prescribed by the Order of 10th July, 1850.

There are, moreover, other difficulties in the way of ascertaining with precision the order of the Court besides the one to which we have adverted. It often happens that a portion only of the case is opened to the Court, the parties being agreed, or supposing themselves agreed, on the rest of the case. The decision of the Court upon the points in dispute has frequently an important bearing on the other points of the case, and other questions then arise not previously anticipated, and upon which the Court has pronounced no opinion. Even in contested cases this not unfrequently occurs. The judgment of the Court decides the points argued, but consequences follow from the decision which have to be worked out in detail in the order, and upon these details differences constantly arise.

Again, each counsel indorses on his brief a note of the decision according to his own interpretation of it. These indorsements sometimes vary from the registrar's note and from each other. Each party then contends for the interpretation put on the decision by his own counsel, and delay and expense arise from attempts to reconcile these conflicting notes. The registrar's note ought to prevail; but as the counsel are better acquainted with the case than the registrar, the registrars are naturally apt to distrust the accuracy of their own notes, and endeavour to ascertain the actual order from comparing all the notes made at the time.

These difficulties are experienced in a still

greater degree in cases which are not contested in Court, when so much only of the case is opened to the Judge as to satisfy him that the parties are entitled to the order asked, the details being left to be worked out by the parties or by the registrar. In these cases, when the order is not one of the most ordinary nature the minutes are generally prepared by counsel, and are often settled by the counsel of the different parties in conference. When so settled there is generally little or no difficulty. It is, however, the duty of the registrar to frame the order, and he cannot require the assistance of counsel.

#### *Minutes of Orders on Petitions and Motions.*—

It has been already explained that the minutes of orders on petitions and motions are prepared by the registrars' clerks from the registrar's notes and the briefs of counsel, while the minutes of decretal orders are prepared by the registrars themselves. The registrar's clerks not being generally in the habit of attending Court, and not possessing the experience of the registrars, ought not, as we conceive, to be solely intrusted with the duty of preparing the minutes of all orders, on petitions or motions. Many of these orders, on petitions particularly, are of a very complicated and difficult nature, comprising the cases in which a summary jurisdiction has been conferred on the Court by various Acts of Parliament, *e.g.*, the Act giving the Court power to appoint new trustees in a summary way, and to vest the trust property in new trustees or otherwise as may be requisite: the Trustees Relief Act, authorising trustees to pay trust funds into Court, and authorising the Court to distribute those funds on petition without bill filed; the various Railway Acts and other Acts authorising public works; besides all private Acts conferring a summary jurisdiction on the Court. The minutes prepared by the clerks are delivered out without their having previously been submitted to the registrars, and in many cases much delay and expense have arisen from the imperfect nature of such minutes. The solicitor having obtained the minutes, and finding them imperfect, generally consults counsel upon them; and as each solicitor probably does the same, much time is consumed in obtaining the counsel's alterations, in collecting the minutes as altered by counsel, and subsequently arranging the terms of the order. The minutes prepared by the registrars themselves are also sometimes imperfect, giving rise to similar applications to counsel, and consequent alterations and discussion.

It is further to be observed that the imperfect state of the minutes furnishes an excuse for delay by parties to whom the order is adverse, and who may wish to postpone the execution of the order, and to throw obstacles in the way of its being drawn up.

*Settling Minutes of Orders.*—The minutes of every order on which any question arises are settled with the registrar at the registrars' office; and the practice is for the solicitor having the carriage of the order to give notice to

the opposite solicitors to attend the registrar for that purpose at a time fixed by the notice, generally on the first day after the notice is given at which the particular registrar is expected to be at the office. The time of the day fixed for this purpose is generally at some time between 12 and 2 o'clock; and as many minutes have to be settled, and many orders have to be passed at the same time, the registrar is generally, more particularly during the busy season of the year, overwhelmed with these attendances; his room is crowded with solicitors pressing for attention, and much confusion arises, especially when, as often happens, two registrars are sitting in the same room, each pressed by solicitors. It is practically impossible usefully to discuss the terms of a complicated order under such circumstances. But this is not the only difficulty, for if all the solicitors do not attend, the registrar generally declines to settle the minutes, and another appointment must be made. When the second appointment is made, some or one of the solicitors may still be absent, and fresh delay arises. The registrar is naturally unwilling to settle the minutes unless all parties are present, on account of the inconvenience and expense attending the correction of an order when drawn up, if any material error should be discovered in it. The appointments at the registrar's office are not considered peremptory, and they generally take place at the busiest part of the day; and as six Courts of Equity are sitting at the same time, and as business is transacted at the same time, in the chambers of four Equity Judges and of six Taxing Masters, besides the Masters' offices and the Examiner's office, it is extremely probable that solicitors in extensive practice will be engaged elsewhere at the time fixed.

It sometimes, too, happens that a registrar is compelled to be in Court or at the Accountant-General's office when he is expected at the registrars' office, and in that event the appointment to settle the minutes necessarily fails.

*Evidence referred to.*—It is further to be observed, that every order contains a reference to the evidence on which it is made, and particularly notices the documentary evidence, generally specifying the nature of the document and its date, if any, or if the document be referred to as an exhibit, then either specially noticing the mark on the exhibit or identifying the exhibit generally by reference to the affidavits or deposition produced. When a cause is regularly heard at length, and all the evidence produced and read in Court, the registrar sitting in Court takes down a note of each document as it is handed in; but as it often happens that the evidence is not read at length, in some cases those portions only being read which are material to the points disputed before the Court, and in other cases no portion being openly read in Court, the registrar has not the opportunity of taking down notes of the documents. In order, therefore, to the evidence being properly entered in the order when drawn up, it is necessary that the regis-

trar should be furnished by the solicitor with a list of the documents to be entered.

Again, a very large proportion of the orders consists of orders to be acted on by the Accountant-General, and before such orders can be drawn up the certificate of the Accountant-General, shewing the exact amount and particulars of the fund in Court, must be produced.

*Production of Briefs of Counsel.*—Furthermore, before the order can be passed, the briefs of the counsel appearing before the Court in the case must be produced, to satisfy the registrar of their having appeared, and where parties are numerous and the solicitors hostile or negligent, great difficulty and delay occur in the production of the briefs.

It sometimes happens that the registrar discovers that some material party has not been served with proper notice of the proceeding, in which case the order cannot be drawn up without the production of a brief for the party omitted to be served, or the matter being brought again to the attention of the Court.

Again, it sometimes happens that in the opinion of the registrar the order may have been pronounced by the Court without all the circumstances of the case having been sufficiently drawn to its attention, or may from inadvertence be contrary to the established practice of the Court, and in these cases the registrar deems it to be his duty not to draw up the order without the matter being brought under the Judge's notice.

The points to which we have adverted seem to us to indicate the principal causes of the delay in drawing up the orders of the Court. In some cases, however, the complicated nature of the order renders it necessary to bestow much time and attention on the details, and in these cases delays are often unavoidable.

## NOTICES OF NEW BOOKS.

*Costs in the Superior Courts of Common Law and in Conveyancing, also in Bankruptcy, Insolvency, Proceedings in the Crown Office, and on Crown side on Circuit and at Sessions; together with Costs of Interlocutory Rules and Orders under the Common Law Procedure Acts, 1852 and 1854, and Bills of Exchange Act, 1855.* By JOHN SCOTT, Esq., Barrister-at-Law and Reporter of the Court of Common Pleas. London: Stevens & Norton. 1856. Pp. 588.

It has often been remarked that practitioners are generally embarrassed in their choice of law books by the number of treatises published on the same subject. No sooner does an Act of Parliament pass, of any degree of importance, than half-a-dozen members of the Bar rapidly "rush into print" in the shape of editions of the Act, with notes on the previous state of the law,

and with comments on the alterations effected, or intended to be effected, by the new enactments. We cannot much complain of this super-abundance of learned annotation. The authors or their publishers are the chief sufferers if the book be unsuccessful, though it is no small tax on the practitioner who purchases and peruses several copies, with varying versions, of the same Statute. It must be admitted, also, that a barrister is well entitled to bring his name before the Profession as the able editor of a complicated Act of Parliament. It generally happens that many parts of every Act require analysis and explanation in order to be thoroughly understood. We presume that this class of ambitious writers is too numerous; to expect any common agreement amongst them, to divide the exposition of the labours of the Session, and appropriate to one or two of their fraternity the task of annotating each Statute, and thus relieve the Profession of the conflict of authorities.

In the work before us there is no such difficulty. The subject of *Costs*—whether between party and party or between attorney and client—is one of very general interest in every attorney's office, and we wonder that the rivalry which exists, not only in editing Acts of Parliament, but in all departments of Law and Practice, should not have been carried into the wide field of "costs, charges, and expenses," which we doubt not will be found very productive to all concerned therein.

Mr. Scott, the very learned and accurate Reporter of the Cases decided in the Court of Common Pleas, has at length been induced to undertake the task, not only of giving the rules of taxation, the fees of office, and the forms of affidavits in support of what are called "increased costs," beyond the formal allowance of 40s., but has compiled a series of bills of costs applicable to all kinds of proceedings at Common Law, in Bankruptcy, Insolvency, Criminal Law, and Conveyancing. Mr. Scott observes in his Preface that—

"Several years having elapsed, and numerous changes having taken place in the law affecting costs, since the publication of the latest work on the subject,<sup>1</sup> it has been thought desirable to offer to the Profession a new work embracing all the allowances which are now usually made on taxation in the Superior Courts in the course of the various proceedings as well under the general law as under the recent

Statutes regulating the practice at Common Law.

"That the task might have fallen into the hands of one better qualified, the compiler was well aware when he undertook it. Having, however, entered upon the work, he has spared no pains to make it complete and practically useful,—freely availing himself of the aid of friends, whose kindness he would gladly acknowledge.

"The 'costs on postea,' 'miscellaneous bills,' 'costs in bankruptcy,' &c., are all taken from bills which have actually passed through the ordeal of the Master's office.

"The costs of proceedings in the Crown office are in like manner selections from taxed bills, which the kindness and courtesy of Mr. Jones, the very excellent and experienced Master, placed at the compiler's disposal—with the exception of a few pages which he has, with the permission of his friend Mr. Corner of the Crown office, extracted from the Appendix to that gentleman's valuable Treatise on the Practice on the Crown Side of the Court of Queen's Bench.

"To the country practitioner more especially the pages devoted to 'conveyancing costs' will, it is hoped, prove acceptable. These bills have been selected with care, as embracing nearly all the subjects upon which information is desirable; and with the 'general charges,' will readily enable even the least experienced conveyancing clerk to frame an unexceptionable bill."

We think Mr. Scott has bestowed his accustomed care and pains-taking in the composition of this valuable work, which must be essential to every practitioner and his clerks who are engaged in the several branches of law to which it relates.

The following is a concise statement of the Contents of the volume:—

"*Part the First.*—1. Table of fees in the Superior Courts of Common Law, M. 1852; 2. Associates' fees on circuit, under 15 & 16 Vict. c. 73; 3. Sheriffs' fees and addenda; 4. Fees of ushers, tipstiffs, &c.; 5. View; 6. Queen's prison.

"*Part the Second.*—1. Directions to the Taxing Masters, H. 1853. General allowances for plaintiffs and defendants; 2. Indorsement of writ of summons.

"*Part the Third.*—Plaintiff's costs on postea. 1. Higher scale; 2. Lower scale; 3. Miscellaneous.

"*Part the Fourth.*—Defendant's costs on postea. 1. Higher scale; 2. Lower scale; 3. Miscellaneous.

"*Part the Fifth.*—Costs in error.

"*Part the Sixth.*—Bankruptcy. Under general orders made in pursuance of the 17 & 18 Vict. c. 106. Bills of costs.

"*Part the Seventh.*—Insolvency.

"*Part the Eighth.*—Conveyancing.

"*Part the Ninth.*—Common and general charges.

<sup>1</sup> We learn that a work has just been announced by Mr. Dax, the son, we presume, of the late Master of the Exchequer.

"Part the Tenth.—Of obtaining letters-patent.

"Part the Eleventh.—Parliamentary costs.

"Part the Twelfth.—Criminal proceedings.

1. Crown office; 2. Prosecutor's costs at the assizes; 3. Prosecutor's costs at sessions.

"Part the Thirteenth.—Queen's Remembrancer's office.

"Appendix.—1. Affidavits of increase; 2. Certificates. List of fees in the Insolvent Court."

## APPELLATE JURISDICTION.

### SOCIETY OF SOLICITORS OF SUPREME COURTS IN SCOTLAND.

At a Special General Meeting of the Society of Solicitors before the Supreme Courts of Scotland, held within their Hall, in the Parliament House, on the 22nd of April, 1856.

The subject of the Appellate Jurisdiction of the House of Lords being at present under the consideration of a Committee of their Lordships' most Honourable House, and alterations thereon having been suggested from various quarters, the Society of Solicitors before the Supreme Courts of Scotland desire respectfully to state the opinions indicated in the following resolutions, to which, after full consideration, the Society unanimously agreed—

1. That the Society would deprecate any change tending to dis sever the Appellate Jurisdiction of the House of Lords in Scotch Appeal Cases from the other functions of their Lordships' most Honourable House, believing that no other tribunal could be constituted which would command equal weight and confidence with the public, or equal professional and judicial abilities and eminence.

2. That the dissatisfaction which has sometimes been felt with the House of Lords as a Court of Appeal in Scotch cases, has been caused, not by the circumstance that those Peers who took part in the decision were English, and not Scotch, lawyers, but generally from the want of systematic attendance of, and assistance by, a greater number of Law Peers at the hearing of each cause.

3. That an arrangement by which the attendance of a sufficient number of Law Peers, not less than four, possessed, if possible of continuous, and not merely of occasional, judicial experience, at the hearing of each cause, would be a real improvement on the tribunal as a Court of Appeal.

4. That the Society would not deem it objectionable if an arrangement were made whereby a Scotch Judge, whose high judicial qualifications and eminent fitness have been established by experience, was elevated to the Peerage, in order that he may take part in the House of Lords as a Judge in all appeals to that high tribunal, as a British and Irish Court, as well those from English and Irish, as those from the Scotch Courts, provided it

were the rule and the practice that in all such appeals a sufficient number of qualified Peers should attend and act as Judges.

5. But the Society would strongly deprecate any change in the Appellate Tribunal, whereby a Scotch Lawyer, whether Judge or Barrister was to be appointed to assist the House only in Scotch Appeals, as assessor, or under any other name. Such an official would, in the opinion of the Society, tend to prevent that searching inquiry into the principles of the Law of Scotland which, in presence of English Law Lords is now elicited by the contrast between these principles and those of the Law of England; and, with the great majority of the public, the presence of such an official would destroy the confidence in this, the highest and ultimate tribunal, by its being supposed that he practically was the sole Judge, reviewing, and perhaps reversing, decisions, sometimes of the whole 13 Judges of the Supreme Court of Scotland, and at all times of, at least, the majority of the four Judges of one of the two divisions of that Court. The Society do not see how the country can have security that this one official would be a better Judge, or be possessed of higher attainments, than the Judges in the Supreme Court, and, while they have constant or daily experience and connection with the Law of Scotland, he would have only Scotch Appeal business to attend to, and if selected from the Bar, his fitness for the Judicial Bench would not previously have been ascertained.

(Signed) L. BAILEY, *Preses.*

## LEGAL EDUCATION.

To the Editor of the *Legal Observer*.

### REDUCTION OF STAMP DUTY AND INCREASE OF QUALIFICATION.

SIR,—Among the many reformatations and improvements which characterise the present age, none yet have been made affecting the constitution of the legal body in the community. To be an attorney and solicitor, a peculiar qualification is required;—a qualification long established and strictly insisted upon; and which "secure in its existence lies," unburied amid free trade, the extension of the franchise, and even law reform. Yet it may, nevertheless, be asked, is it immortal? Is the present system never to cease, never to be reformed, or is it incapable of improvement? I humbly submit that it is not immaculate, but that some slight alterations might be introduced with advantage, both to the Profession and to the Public.

Under the present system a clerk has to serve five years under articles, which calls for an outlay in the first instance, that effectually prevents the generality of the employed from ever attaining the position of the employer. Now, would it not be equally beneficial to the Public and the Profession to increase the mental qualifications necessary to become a solicitor,

and decrease the pecuniary demands? The change would tend to elevate the character of the Profession and add greatly to its efficiency; and allow some who are worthy but not wealthy enough; to enter the number of the favoured few. It cannot be denied that there are many excluded by the existing state of the law, who deserve, and would otherwise be competent to enter the Profession. Take as an illustration the following case,—one by no means unfrequent:—A young man seeking an engagement as clerk, enters a lawyer's office, he is a human copying machine, but perhaps after a time becomes a general clerk. By steadiness and due diligence he advances to the highest position attainable, which is low indeed compared with what it would have been in any other line of life after similar exertions. He may have by industry acquired a considerable knowledge of the principles as well as the practice of law; and by perseverance, so improved the rudimentary education he received at school, as to make himself tolerably proficient in the other branches of learning that are considered to constitute a good education. But all his diligence and perseverance will be useless—no matter how competent he may be,—if he is not articled; there is an end to his prospects. His salary most probably is inadequate to provide the necessary means for his entering into articles, even if his employer should be willing to receive him, as an articled clerk—and he, although desirous of aiding him, is not ready to present him with a year's salary, and the clerk is as ill able to lose it, in order to meet the necessary expenses.

There is scarcely any other profession where this principle of exclusiveness is so rigorously adhered to, and operates so unjustly upon its servants, and so injuriously to the public. The public demand is for men of ability, lawyers of learning, and skilful practitioners; it is perfectly immaterial whether they were sufficiently wealthy to enter the lists, provided they were found worthy of the ultimate reward.

Let the mental qualifications required be of a higher character and more extensive, so as to call forth the activity of the student, and encourage young men of talent to enter the Profession. In addition to the general principles of Law, there might with advantage be added other branches of learning: it might be required that candidates should pass examinations in classics, mathematics, legal history, and English composition. And let the examination extend over two or three days, or even a week,—or, better still, have two or three examinations during the service of articles, by which the unfair and pernicious practice of *cramming* would in some degree be prevented. Independent of the question of reducing the fees, it is clearly manifest that the present examination is practically valueless; for what client is willing to trust his affairs in the hands of a newly examined clerk, or a solicitor to engage him, simply on the strength of his having passed his examination? It is only proper that a solicitor pronounced perfect by

the strict test of an examination, should be thereby certified as being fully competent to practise, and worthy of the confidence of those who need professional assistance. It would also be an encouragement and excite emulation if the candidates were classed and arranged according to their several degrees of proficiency, according to the plan adopted in many of the public examinations.

The reduction of the pecuniary claims on the candidates will probably be viewed in a less favourable light. But will the profession be the party aggrieved if the stamp on the articles of agreement is reduced, say to 10*l.*, or even to the usual agreement stamp? The loss to the revenue would be trifling, and if the public were called upon to compensate for the diminution, they are the parties who derive the benefit by having a better qualified class of solicitors. The plan would perhaps meet with some resistance from the Profession, as an invasion of their privileges, and as tending to destroy that select character which it now claims to enjoy. But it is evident that the present pecuniary barrier is equally liable to fail (as indeed it has) to keep the Profession select; and it would be strange were it otherwise, since the Law is a Profession notorious for its *luxuriance*, and not its *agreeable* character, and offers, therefore, a compensation for the first outlay by future remuneration. The obstacle in regard to amount is not sufficient to secure men of wealth alone, much less of standing and respectability, while the mental qualifications could never fail to ensure men of ability. As a guarantee to the public for the character of its members, an educational test, instead of a pecuniary, is more likely to secure men of principle and integrity, not being neutralized by prospective remuneration.

Those who will carefully consider the subject will come to the conclusion, that education rather than wealth constituting the chief qualification involves, to a considerable degree, both requisites. A classical and mathematical education is by no means common and inexpensive; and if by more than ordinary application an individual increases his amount of information, he is fairly entitled to reap the same benefit as he would have derived from the exercise of his industry in increasing his fortune. If facilitating the promiscuous admission of clerks to the ranks of the principals be regarded as an invasion of vested rights and long established privileges, the barrier might be placed at the close, instead of at the commencement, of the service of articles, by increasing the fees on their admission as attorneys, and not on their articles. This would answer the purpose almost equally well, and it would tend in a great measure to remove the baneful system of *castes* which now exists between the articled and the hired clerk, without encroaching on the province of the employer; since it is the practice, and not the privilege, that makes the principal. Either way, it would limit rather than increase the number of applicants for admission. There is no question that the Legal

Profession, even now, is considerably overdone. Crowds are found flocking to every examination, while there are already more practitioners than find practice, and while the Law is rendered less remunerative, and probably will be made still less so. The natural consequence will follow: the Profession will decline, men of talent and station will keep aloof from it, and the public will be left to the mercy of those who make the law a source of abuse and extortion.

If it should be considered absolutely necessary that the privilege of becoming a solicitor should be confined to clerks articulated under the existing regulations, might not clerks who have not been articulated be permitted to pass the same examination, if only for the purpose of ascertaining their capabilities, and affording encouragement to legal learning. A certificate of having satisfactorily passed an examination would be a most valuable testimonial.

In conclusion, I would only add, that the present condition of clerks in the law is a crying evil, and whatever may be the views of those in the Profession with respect to the alterations now proposed, there is but one opinion among those without, who unanimously condemn the present tax as most unfair, and the existing state of the law as at variance both with reason and justice. And if the entrance to professional privileges is still to be by a golden key only, let there be at least some encouragement held out to the diligent and persevering, and some additional stimulus given to promote the practice and study of the law. B.

## LAW OF ATTORNEYS AND SOLICITORS.

### LIEN OF SOLICITOR TO TENANT FOR LIFE AS AGAINST REMAINDER-MEN.

A TESTATOR bequeathed the residue of his estate, consisting chiefly of leaseholds and shares, in trust to his wife, Mrs. Richards, for life, with remainder on her death to his daughters, and afterwards for their children; and he appointed his wife and two others (who renounced) executrix and executors and trustees of his will. The widow alone proved, and entered into possession of the property without conversion, until 1854, when the plaintiff and the three other daughters filed a bill (*Waeick v. Richards*) against her for the sale and conversion of the property and to carry the trusts of the will into execution. The widow answered, but died before the hearing, having appointed the defendant Letts, and another, executors of her will. The plaintiff obtained letters of administration *de bonis non* of the testator's estate.

The defendant Letts was the widow's solicitor in the suit, and she had delivered to him the title-deeds and papers belonging to the estate, and he now refused to deliver

them up to the plaintiff, claiming a lien thereon for his costs of suit. This bill was thereupon filed for the delivery of the title-deeds.

The *Master of the Rolls* said :—

"I am of opinion in this case, that the defendant has no lien upon these deeds. It is quite settled, both by principle and authority, that no person can give a lien upon deeds, as against another person; he can only give a lien as against himself, and to the extent of his own interest. In this case, Mrs. Richards undoubtedly has given a perfectly good and complete lien to Mr. Letts, as against herself, and she could not obtain these papers from Mr. Letts without paying him everything which he was justly entitled to as her solicitor. After her death, Mr. Letts was still entitled to any lien upon these papers which the executrix had as against the plaintiff; but, in my opinion, she had none. The burden of proof lies upon the defendant to make out his lien; and independently of the suit of *Waeick v. Richards*, and what took place in it (the effect of which I shall presently consider), the case is the same as if the lien had been created by the executrix in favour of a mere stranger. Suppose Mrs. Richards to be still alive, but by reason of some event which had happened, her interest in the estate had ceased, these deeds and papers which relate to the property of which she was tenant for life, with remainder to the plaintiff and other persons, for whom the plaintiff is now trustee, they would properly have been in the custody of the executrix, so long as she was tenant for life, but when her interest ceased, they belonged to the persons who then became entitled to the property. If she were still alive, the question would be this:—what lien has she upon these papers? and it would be essential for Mr. Letts to show that she had still a lien upon them, as against the plaintiff.

"It has been argued, that there is, in point of fact, in the plaintiff a mere continuance of the estate and character of the legal personal representative of the original testator. That is so, but the debt which was due from the executrix to Mr. Letts, was not due from her in her character of executrix, but was due from her personally; and whether she had assets or not of the testator, she would have been bound to pay every penny to Mr. Letts, and he would have a right to sue her personally, whether she had any assets or not. No doubt, in one sense, the debt was incurred by proceedings relative to her office of executrix, but it was not a debt due from her in her character of executrix or legal personal representative; for if so, she would only have been liable to the amount of assets which she had received, but she in point of fact was personally liable for the whole amount due.

"I will assume, in favour of Mr. Letts, that if the suit of *Waeick v. Richards* had proceeded to a decree, Mrs. Richards would have been entitled to her costs. But in what way

could those costs be now obtained for Mrs. Richards' estate? The legal personal representative could not revive the suit for the purpose of obtaining them. It is the rule of the Court, which in a great many cases may work considerable injustice, that you cannot revive for the purpose of obtaining costs. The legal personal representative of Mrs. Richards, therefore, would have no means of obtaining those costs after her death. If the costs of that suit formed part of Mrs. Richards' estate, I do not hesitate to say, that Mr. Letts would be entitled to a specific lien upon them, and that the legal personal representative of Mrs. Richards might have been entitled to retain the deeds until the costs had been paid, which might have created a lien in favour of Mr. Letts; but I see no means by which those costs can be made part of Mrs. Richards' estate, or by which her legal personal representatives could recover them. The case, I think, cannot stand differently from what it would if Mrs. Richards were now alive, and the suit were discontinued and her interest in the estate had determined. In that case, the persons in remainder would be entitled to recover those deeds and papers; but if she had a lien upon them in respect of any costs, she would be entitled to retain them for that purpose, and Mr. Letts would stand in her place; but no costs would be due to her.

"I also consider that the institution of a suit makes no difference in that respect. If I am right in this (which is the principle and foundation of my decision), that this is a personal claim of Mr. Letts against Mrs. Richards, and simply against her estate; and that consequently she could give no lien upon the deeds, other than that which she herself possessed; that the burden of proof lies upon Mr. Letts, and that he has failed in proving any such lien.

"It has been suggested, that if this were an action at law, it would be necessary to prove conversion; that is, a resistance to deliver up the documents sought to be recovered. This is so at law, but in equity the Court looks at the case made by the defendant; it is not necessary to apply to a defendant before a suit instituted, but if a defendant says, 'If you had applied to me, I should not have contested your claim,' then, undoubtedly, he gets the costs of it; but if it appears that an application would have been useless, and that the defendant resists at the hearing, the Court looks at the case exactly in the same point of view as if that right had been insisted upon before the bill had been filed; and, in fact, that is what has taken place in this particular case. That this is a case of great hardship against Mr. Letts, I think no one can doubt; because Mr. Letts has been honestly employed in using his exertions for the benefit of a client, with relation to a suit, which seems to have been conducted in raising points which might have affected Mrs. Richards; and though I express no opinion as to what the result of the suit would have been, or whether she would have been entitled, if it had been ultimately decided, to

the costs of the suit; yet, in the result of what has happened, Mr. Letts is debarred from claiming the costs of that suit, except against the estate of Mrs. Richards, and by reason of the discontinuance of it, it cannot now be ascertained whether these costs could be claimed by her against the present owner of these deeds.

"I have already determined, in a case in which I gave judgment yesterday,<sup>1</sup> that a solicitor does not acquire a lien upon an estate recovered in the suit. That is totally distinct from the question of having a lien upon papers created by the client himself.

"I am therefore of opinion, in this case, that there is no lien upon these papers, and that they must be delivered up to the plaintiff, and the defendant must pay the costs of suit."  
*Turner v. Letts*, 20 Beav. 185.<sup>2</sup>

## ADMINISTRATION OF CRIMINAL LAW BILL.

THE objects of this Bill are to make better Provision for the Prevention and Punishment of aggravated Assaults upon Women and Children, and for preventing Delay and Expense in the Administration of certain Parts of the Criminal Law. The enactments are briefly as follow:—

In the 16th and 17th years of her Majesty's reign an Act was passed, intitled "An Act for the better Prevention and Punishment of aggravated Assaults upon Women and Children, and for preventing Delay and Expense in the Administration of certain Parts of the Criminal Law:" And whereas the said Act has been found insufficient for the protection of women and children from aggravated assaults: Be it enacted as follows:—

1. It repeals the 16 & 17 Vict. c. 30, and then enacts—

2. When any person shall be charged before two justices of the peace sitting at a place where the Petty Sessions are usually held, or before any magistrate of the Police Courts of the metropolis sitting at any such Police Court, or before any stipendiary magistrate elsewhere, with an assault upon any female whatever, or upon any male child whose age shall not in the opinion of such justices or police or stipendiary magistrates exceed 14 years, either upon the complaint of the party aggrieved or otherwise, it shall be lawful for the said justices or police or stipendiary magistrate, if the assault is of such an aggravated nature that it cannot in their

<sup>1</sup> *Shaw v. Neale*, 20 Beav. 157.

<sup>2</sup> Upon appeal to the *Lords Justices*, May 28, 1855, they considered that if the deeds were in the hands of the widow, they could not be taken out of her possession without indemnifying her from the costs of the suit instituted against her. But as it was alleged that she was a debtor to the estate, they held that that fact must be investigated, and that the question of law must stand over.

or his opinion be sufficiently punished under the provisions of the Statute 9 Geo. 4, c. 31, to proceed to hear and determine in a summary way, and if they shall find the same to be proved, to convict the person accused; and every offender so convicted shall be liable to be imprisoned in the common gaol or house of correction, with or without hard labour, for a period not exceeding two calendar months, nor less than 14 days and if a male to be once privately whipped, in addition to such imprisonment as aforesaid, such whipping to be inflicted not sooner than two clear days from the date of the conviction nor later than within one clear week of the termination of the said term of imprisonment as aforesaid, and, if the magistrate or magistrates shall so think fit, shall be bound to keep the peace and be of good behaviour for any period not exceeding six calendar months from the expiration of such sentence; and such conviction shall be a bar to all future proceedings, civil or criminal, for or in respect of the same assault; and no person convicted under this Act shall be entitled to appeal against such conviction to the General Quarter Sessions of the Peace, anything to the contrary in any Statute notwithstanding.

3. The Court of General or Quarter Sessions may, upon proof of conviction and notice to parties, declare a recognizance to keep the peace or to be of good behaviour to be forfeited.

4. No person committed to prison under any warrant or order of one justice of the peace for or on account of not entering into recognizances or finding sureties to keep the peace, or to be of good behaviour, shall be detained under such warrant or order for more than 12 calendar months from the time of such commitment.

5. Indictments for misdemeanor not to be removed by certiorari, except on affidavit that a fair trial cannot be had, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury, may be required for the satisfactory trial of the same.

6. No certiorari to issue to remove indictment, unless recognizance given for payment of costs.

7. The Costs herein-before respectively mentioned shall be taxed according to the course of the Court of Queen's Bench; and for the recovery thereof the persons entitled thereto shall, at the expiration of ten days after demand made of the person or persons at whose instance the writ of certiorari was awarded, and on oath made of such demand and refusal of payment, have a writ of attachment granted against him or them by the Court of Queen's Bench for such contempt; and the said Court shall and may also order the said recognizance to be estreated into the Exchequer.

8. If no recognizance given, Court to try as if no certiorari awarded.

9. This Act shall not extend to any writ of certiorari awarded at the instance of her Majesty's Attorney-General.

10. Secretary of State may issue his warrant for bringing up a prisoner (not in custody under civil process) to give evidence.

11. This Act shall not extend to Scotland or Ireland.

## EXPIRING LAWS.

*Poor Law.*—10 & 11 Vict. c. 109.—23rd July, 1847. For the Administration of the Laws for Relief of the Poor in England; continued 17 & 18 Vict. c. 41.—24th July, 1854. As to appointment of Commissioners, &c., expires 23rd July, 1859, and end of the then next Session.

*Alterations in Pleadings.*—13 & 14 Vict. c. 16.—31st May, 1850. To enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading; continued 18 & 19 Vict. c. 26.—25th May, 1855. Expires 25th May, 1860.

*Copyhold Inclosure and Tithe Commissions.*—14 & 15 Vict. c. 53.—1st August, 1851; continued 18 & 19 Vict. c. 52.—16th July, 1855. To consolidate and continue the Copyhold and Inclosure Commissions, and to provide for the completion of proceedings under the Tithe Commutation Acts. Temporary as to appointment of Commissioners, &c. Expires 1st August, 1856, and end of then next Session.

*Income Tax.*—16 & 17 Vict. c. 34.—28th June, 1853. For granting to her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices. Expires 6th April, 1860, except as to arrears, &c. 17 & 18 Vict. c. 24.—16th June, 1854. For granting to her Majesty an increased Rate of Duty on Profits arising from Property, Professions, Trades, and Offices. 18 & 19 Vict. c. 20.—25th May, 1855. For granting to her Majesty an increased Rate of Duty on Profits arising from Property, Professions, Trades, and Offices. During the present war and until 6th April after the expiration of one year from the ratification of a definitive treaty of peace; but if the period so limited expires before 6th April, 1860, then from the expiration of such period the duties granted by the 16 & 17 Vict. c. 34, are to revive during the remainder of the Term therein limited.

*Insurance on Lives (Abatement of Income Tax).*—16 & 17 Vict. c. 91.—20th August, 1853. To extend for a limited time the provision for Abatement of Income Tax in respect of Insurance on Lives; continued by 18 & 19 Vict. c. 35.—26th June, 1855. Expires 5th July, 1856.<sup>1</sup>

*Bribery, &c.*—17 & 18 Vict. c. 102.—10th August, 1854. To consolidate and amend the

<sup>1</sup> This exemption or reduction should be continued so long as the Income tax is payable



Laws relating to Bribery, Treating, and undue influence at Elections of Members of Parliament. Expires 10th August, 1855, and end of then next session.

## SELECTIONS FROM CORRESPONDENCE.

### UNAUTHORISED CHARGE.

*A. B.*, an attorney, is instructed by his client, *C. D.*, to write to *E. F.* complaining of some expressions he had used tending, as he imagined, to a defamation of character. *E. F.*, on receipt of the letter, waits on *A. B.* and strongly denies the imputation. Well, says *A. B.*, will you sign a letter to that effect? Certainly, he replied. *A. B.*, *C. D.*'s attorney, instantly writes such a letter, which *E. F.* immediately signs. Soon afterwards the attorney had to settle an account he owed to *E. F.*, and actually deducted 7*s.* from it for his trouble. Is he justified in this? and would not the Court, on a proper application order the money to be restored. *A. B.*

### DISALLOWANCE OF COSTS OF UNCERTIFICATED ATTORNEY.

A month or two ago an attorney taxed his costs in an action commenced by him, when the defendant's attorney insisted on the production of his certificate to practise, which he suspected had not been procured. It was promised the next day.

On again attending the taxing officer, the objection was renewed, and all antecedent costs, except money actually disbursed, disallowed.

AMICUS.

### COUNSEL QUASI ATTORNEYS.

*M. A.* should give the name of the town, if not those of the partners. I have a motive in asking the former. *M. A.* (2).

Can any of your numerous readers inform me whether there are any translations of Glanvil, Bracton, Fleta, and Britton?

Bedford Row,  
26th April, 1856.

J. W. L.

## SATURDAY HALF-HOLIDAY.

### RÈGLES GÉNÉRALES OF ALL THE COMMON LAW COURTS.

It is ordered that, in lieu of Rule 164 of the Practice Rules of Hilary Term, 1853, the following be substituted:—"Services of Pleadings, Notices, Summonses, Orders, Rules, and other proceedings, shall be made before Seven o'clock P.M., except on Saturdays, when it shall be made before Two o'clock P.M. If made after Seven o'clock P.M. on any day, except Saturdays, the service shall be deemed

as made on the following day; and if made after 2 o'clock P.M. on Saturday, the service shall be deemed as made on the following Monday."

## NOTES OF THE WEEK.

### COMPULSORY ENFRANCHISEMENT OF COPYHOLDS.

SOME facts have recently come to our knowledge, showing that some lords of manors have been subject to very considerable law and other expenses connected with compulsory enfranchisements. We hope to take an early opportunity of stating the circumstances more at length, and we think the result will manifest the great hardship to which lords of manors are at present subject, in having expenses imposed upon them which should be borne by the copyholder.

We apprehend it will be incumbent on lords of manors to take into consideration the propriety of an application to Parliament to amend the existing Acts.

### LEGAL CHARGES ON PROFESSIONAL MEN.

I shall be glad to be informed of the practice among the respectable portion of the Profession in case of a mortgage made by a professional man.

Is it usual in such cases for the solicitor of the mortgagee to make his *full charge*, as in the case of a non-member of the Profession, or is a difference usually made by houses of respectability?

I have recently seen charges for attendances of 1*l.* 1*s.* and 1*l.* 6*s.* 8*d.* in such cases, besides other objectionable items, and understand they have been pertinaciously insisted upon.

I always imagined some consideration was due to the Profession. I remember even counsel in many cases returning fees to a solicitor in cases where he was personally concerned, and that both at Common Law and in Equity.

### WINDING-UP ACTS' AMENDMENT BILL.

Section 1 of this Bill (which is introduced by Lord Brougham) proposes to enact, that the Judge or Master may by advertisement call meetings of creditors whose debts have been proved, for the purpose of appointing representative of creditors in the proceedings, who shall be elected as in the case of assignees under a bankruptcy. After such advertisement creditors shall be deemed parties to the winding up.

Representatives of creditors may concur in the proceedings and in compromises, and all creditors to be bound thereby; s. 2.

The Judge or Master may appoint Commissioners in Ireland and in England any other person than or in addition to those named in the 12 & 13 Vict. c. 108, s. 20, for receiving evidence; s. 3.

The Act to be deemed part of the Winding-up Acts; s. 4.

# LAW APPOINTMENTS.

Mr. William Henry Cobb, Solicitor, of Warrington, has been appointed Deputy Coroner of Hulton, Cheshire.

It is said by the *Times* that Lord Monck will fulfil in Mr. Grenville Berkeley's place those delicate duties under Mr. Hayter, in the House of Commons, which Mr. Grenville Berkeley has so long performed.

# LEGAL EDUCATION.

In the House of Commons on the 5th inst., Mr. Napier asked whether any steps had been taken by the Government to carry into effect the recommendations for the improvement of legal education contained in the report of the Commissioners appointed to inquire into the Inns of Court.

Sir G. Grey said, he could not say that any decided steps had been taken. The matter was still under the consideration of the Government.

# RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

Brandon v. Brandon. May 3, 1856.

OPENING DECREE AFTER MORE THAN 20 YEARS.—FUND IN COURT.

*Leave was granted for the re-hearing of a decree made in 1825, in respect of the distribution of a fund in Court, on the ground that some of the parties entitled to a share were omitted, and where the delay was occasioned by the parties being numerous and the suit having abated, and a compromise having been set on foot but which failed.*

THIS was an application for leave to have a re-hearing of this administration suit, and in which the decree was made in June, 1825, on the ground that some of the parties entitled to share in the fund in Court were omitted. The parties were very numerous, and it was impracticable to apply before by reason of the successive abatements of the suit, and also that negotiations for an arrangement had been in progress, but had ultimately failed.

Baily and Hardy in support cited *Gwynne v. Edwards*, 9 Beav. 22; *Bulwer v. Astley*, 1 Phill. 422.

The Lord Chancellor said, that the present case was a very fit one for the exercise of the discretion of the Court in allowing a re-hearing, although more than 20 years had elapsed, and granted the application accordingly.

## Vice-Chancellor Kindersley.

Tanner v. Carter. May 6, 1856.

WILL.—CONSTRUCTION.—PAYMENT OF TESTAMENTARY EXPENSES.—PRIORITY OVER LEGACIES.

*The testatrix directed, by her will, the payment of her debts and general and testamentary expenses, and then gave certain legacies. Her sole executrix proved the will through a proctor, whose bill of costs amounted to 140*l.* odd, and she afterwards died, having committed a devastavit. Her estate produced no assets, and that of her testatrix was insufficient to pay the legacies as well as the proctor's bill: Held, that the testamentary expenses were entitled to priority to the legacies.*

THE testatrix, by her will, after directing

the payment of her debts and funeral and testamentary expenses, gave various legacies and the residue to Nancy Eastbrook, whom she also appointed sole executrix of her will. This will was duly proved by the executrix, who however committed a *devastavit* and then died, having appointed the defendant her executrix. It appeared that there were no assets of Nancy Eastbrook, and that the estate of her testatrix was insufficient to pay the legacies. The proctor whom she had employed to prove the will carried in a claim of 140*l.* odd for his bill of costs against the estate, which was resisted.

*Shapter* for the proctor; *Terrell* for the parties interested in the estate of the defaulting executrix; *Stiffe* for her executrix, the defendant. *Cur. ad. vult.*

The Vice-Chancellor said, that the ordinary form for an administration decree was *inter alia* for an account of the debts and funeral expenses, but here the word testamentary was also inserted. It seemed that as the testatrix had directed the payment of her debts and funeral and testamentary expenses in the first instance, the proctor was entitled to his costs previously to the distribution of the estate, and order accordingly.

## Court of Queen's Bench.

Esparte Eastwood. April 28, 1856.

ATTORNEY.—TAXATION OF BILL.—COSTS OF, WHERE MORE THAN ONE-SIXTH TAXED OFF.

*The bill of costs of an attorney as delivered amounted to 36*l.* odd, and about 7*l.* was taxed off on taxation, although the Master added omitted items amounting to 1*l.* 4*s.* 8*d.*: Held, that the attorney was liable to the costs of taxation, under the 6 & 7 Vict. c. 73, s. 37, as more than a sixth had been taxed off either the amended or the original bill.*

THIS was a rule nisi on the Master to review his taxation, whereby he had allowed an attorney the costs of taxation of his bill of costs, which, it appeared, amounted to 36*l.* odd, and from which about 7*l.* had been taxed off. The Master had, however, added a sum of 1*l.* 4*s.* 8*d.* which the attorney had omitted to charge.

*Phipson* showed cause.

The Court (without calling on *Lush* in support), said, that as the amount actually taxed off was more than one-sixth of the bill as originally delivered, or as added to by the Master, the attorney was not entitled to the costs of taxation, and the rule would accordingly be made absolute.<sup>1</sup>

*Bane v. Foshall and another.* May 5, 1856.

COUNTY COURTS' ACT.—TITLE IN QUESTION.  
—PROHIBITION.

*On the trial of a plaint in the County Court to recover damages for the defendants' spoiling a fence, and at the conclusion of the plaintiff's evidence, the Judge asked the defendant if he wished to ask the witnesses any question, when he replied, "No, it's my property." The plaintiff thereupon, under the Judge's direction, obtained a verdict. Affidavits were filed that there was a bona fide question of title in question: A rule was made absolute for a prohibition against further proceeding in the plaint.*

THIS was a rule nisi for a prohibition to the Judge of the Norfolk County Court against further proceeding in this plaint, which was brought to recover damages from the defendants for spoiling a beechwood fence alleged to belong to the plaintiff. It appeared that on the conclusion of the plaintiff's case, the Judge asked whether the defendant wished to ask the witnesses any question, and on his replying, "No, it's my property," gave verdict for the plaintiff, with 5*l.* damages.

*Lush* showed cause against the rule, which was supported by *Phipson* on affidavits that a bona fide question of title was in question.

The Court said that the Judge was wrong in overruling the question of property in the arbitrary manner he had done, and made the rule absolute accordingly for a prohibition.

*Pim v. Campbell and others.* May 3, 5, 1856.

WRITTEN AGREEMENT.—ADMISSION OF PAROL EVIDENCE.

*Evidence was held admissible to show that an agreement for purchase of a share in an invention was signed on the understanding it was not to take effect unless the invention were approved by a party named, and that he had pronounced it worthless.*

THIS was a rule nisi for a new trial on the ground of the improper reception of evidence. The action was brought to recover damages for the breach of an agreement in writing for the purchase of one-eighth share in the plaintiff's invention for grinding auriferous and other ores, and on the trial before Lord Camp-

bell, C. J., the execution by the defendants was proved, but they tendered evidence (which was admitted) to show that the agreement was so signed on the understanding it was not to take effect unless a Mr. Abernethy approved the invention, and that he had pronounced it to be worthless. The jury found this to be the case, and returned a verdict for the defendants.

*Watson and Manisty* showed cause, citing *Davis v. Jones*, Com. B.

*Thomas, S. L., and J. H. Hodgson* in support.

The Court said, that the evidence admitted did not tend to vary or contradict the written agreement, but to show that there never was one. The rule would be made absolute to enter a nonsuit.

*Temperley v. Willett.* May 6, 1856.

COMMON LAW PROCEDURE ACT, 1854.—  
INSPECTION OF DEED.

*A rule was refused for leave to a plaintiff to inspect or take a copy of a deed in the defendant's possession, where it appeared that the plaintiff's object was to use the same in another action against another defendant.*

THIS was a rule nisi under the 17 & 18 Vict. c. 125, s. 46,<sup>1</sup> for leave to the plaintiff to inspect or take a copy of a deed alleged to be in the possession of the defendant, who was a renter of Covent Garden Theatre, and had sold the plaintiff a free admission to the pit.

*Lush and Creasy* showed cause on the ground that the object of the motion was to as-

<sup>1</sup> Which enacts, that "upon the hearing of any motion or summons, it shall be lawful for the Court or Judge, at their or his discretion, and upon such terms as they or he shall think reasonable, from time to time to order such documents as they or he may think fit, to be produced, and such witnesses as they or he may think necessary, to appear and be examined *videlicet*, either before such Court or Judge, or before the Master, and upon hearing such evidence, or reading the report of such Master, to make such rule or order as may be just."

See also the 14 & 15 Vict. c. 99, s. 6, which provides, that "whenever any action, or other legal proceeding, shall henceforth be pending in any of the Superior Courts of Common Law at Westminster," "such Court and each of the Judges thereof may respectively, on application made for such purpose by either of the litigants, compel the opposite party to allow the party making the application to inspect all documents in the custody, or under the control of such opposite party relating to such action or other legal proceeding; and, if necessary to take examined copies of the same, or to procure the same to be duly stamped, in all cases in which, previous to the passing of this Act, a discovery might have been obtained by filing a bill, or by any other proceeding in a Court of Equity at the instance of the party so making application as aforesaid to the said Court or Judge."

<sup>1</sup> The 6 & 7 Vict. c. 73, s. 37, enacts, that "if such bill when taxed be less by a sixth part than the bill delivered, sent, or left, then such attorney or solicitor, or executor, administrator or assignee of such attorney or solicitor shall pay such costs."

certain whether the defendant could give evidence in another action brought by the plaintiff against Mr. Gye, the lessee of the theatre, for expelling him from the pit stalls, where he had gone with the ticket in question.

*Matthew* in support.

The Court said, that the privilege of the inspection of deeds was a most salutary one, but that it must not be abused, and it would be, if it were granted to assist in another action. The rule would therefore be discharged.

### Court of Common Pleas.

*Ashcroft v. Fooks.* April 17, 1856.

COUNTY COURT'S ACT.—VERDICT REDUCED BY SET-OFF BELOW 20*l*.

On the trial of an action before the Secondary of London, to recover 37*l*. odd, the plaintiff only recovered 4*l*., by reason of a set-off being proved. There was no certificate for costs: Held, that the plaintiff was not entitled to his costs.

THIS was a rule nisi to rescind the order of Coleridge, J., for the reviewal of the taxation of the plaintiff's costs in this action, which was brought before the Secondary of London to recover 37*l*. odd, but in which, by reason of the defendant having proved a set-off, the plaintiff obtained a verdict for 4*l*. only.

*Hawkins* showed cause against the rule, which was supported by *Petersdorff*.

The Court (after having taken time to consider) said, that the amount recovered was the criterion, and that if it were under 20*l*. there would be no costs, under sect. 11<sup>1</sup> of the 13 & 14 Vict. c. 61, unless there was a certificate of the presiding officer at the trial, under s. 12,<sup>2</sup>

or a rule or order under 15 & 16 Vict. c. 54, s. 4.<sup>3</sup> The rule would therefore be discharged.

*Forster v. Smith.* April 30, 1856.

APPEAL FROM COUNTY COURT.—COSTS.

Held, that the successful party on a motion for a new trial of a County Court plaintiff, is entitled to costs.

IT appeared, on this appeal from the Cambridgeshire County Court, that a new trial was ordered, and the question now arose as to costs.

*Field* for the appellant; *Collier* for the respondent.

The Court said, that in accordance with the decision of *Leidemann v. Schultz*, 14 Com. B. 38, the successful party was entitled to costs.

*Parker v. Midland Railway Company.* May 6, 1856.

RAILWAY COMPANY.—ADMISSION OF PASSENGERS INTO STATION.

Held, that a railway company is not bound to admit the driver of an omnibus with passengers into their station; although, semble, that the passengers could sue for their being so excluded.

THIS was a demurrer to the declaration in this action, which was brought by the driver of an omnibus at Stamford against the defendants for refusing to admit his omnibus and passengers into their station at that place.

*Beesley* for the plaintiff.

The Court (without calling on *Phipson* in support of the demurrer) said, that, although the passengers might have a right of action against the defendants, the plaintiff had not, and allowed the demurrer accordingly.

<sup>1</sup> Which enacts, that "if in any action commenced after the passing of this Act in any of her Majesty's Superior Courts of Record, in covenant, debt, &c., not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding 20*l*., &c., the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases hereinafter provided, and except in the case of a judgment by default; and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs, nor shall any such plaintiff be entitled to costs by reason of any privilege as attorney or officer of such Court or otherwise."

<sup>2</sup> Which provides, that "if the plaintiff shall in any such action as aforesaid recover a sum less than the sum in that behalf hereinbefore mentioned, by verdict, and the Judge or other presiding officer before whom such verdict shall be obtained, shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in any such County Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Court in which the said action was brought, the

plaintiff in such case shall have the same judgment to recover his costs that he would have had if this Act had not been passed."

<sup>3</sup> Which enacts, that "in any action in which the plaintiff shall not be entitled to recover his costs by reason of the provisions of the 11th section of such Act, whether there be a verdict in such action or not, if the plaintiff shall make it appear to the satisfaction of the Court in which such action was brought, or to the satisfaction of a Judge at Chambers, upon summons, that such action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts by the 128th section of 9 & 10 Vict. c. 95, or for which no plaint could have been entered in any such County Courts, or that such action was removed from a County Court by certiorari, or that there was sufficient reason for bringing such action in the Court in which such action was brought, then and in any of such cases the Court in which such action is brought, or the said Judge at Chambers, shall thereupon, by rule or order direct that the plaintiff shall recover his costs; and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if the before-mentioned Act of the 13 & 14 Vict. c. 61, had not been passed."

*Boussey v. Wordsworth.* May 6, 1856.

COUNTY COURT.—TRADESMAN'S BILL.—MATERIAL PART OF CAUSE OF ACTION.—JURISDICTION.

*Where certain goods in a tradesman's bill were supplied to the defendant within the jurisdiction of a County Court, but others were not, held, inasmuch as the cause of action could not be divided and the bill constituted one cause of action, that the cause of action arose in some material part within the jurisdiction of the Court where the plaintiff dwelt.*

THIS was an action by the plaintiff, a butcher at Uxbridge, to recover the amount of his bill for goods supplied to the defendant, who lived at Chesholt. It appeared that the greater part of the goods had been ordered where the plaintiff resided, and that some had been delivered at the defendant's house. The plaintiff obtained a verdict, and now obtained this rule for his costs under the 9 & 10 Vict. c. 95, s. 128, which enacts, that "all actions and proceedings, which, before the passing of this Act, might have been brought in any of her Majesty's Superior Courts of Record where the plaintiff dwells more than 20 miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought," &c., "may be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this Act had not been passed."

*Honyman* showed cause; *Carter* in support.

*Cur. ad. vult.*

The Court said, that according to the case of *In re Aykroyd*, 1 Exch. R. 479, the cause of action in one of this kind could not be split, and that, although each separate order might be sued for separately, when the bill containing several items was delivered, it became one cause of action, and the plaintiff was bound to sue for the whole in one suit. This was a convenient and proper rule of construction, and there was therefore in the present case one cause of action. The question then was, whether a material part of the cause of action did not arise where the defendant dwelt. As the whole bill was for one cause of action, and a material part, viz., the order for some of the items, had arisen within the jurisdiction of the County Court where the plaintiff dwelt, that Court had jurisdiction to try the whole cause of action, and the rule would therefore be discharged.

#### Court at Eschequer.

*Hatton v. Whitehouse.* April 21, 1856.

COMMON LAW PROCEDURE ACT, 1852.—WRIT OUT OF JURISDICTION.—LEAVE TO PROCEED.—JUDGMENT.

*A writ was issued in the form prescribed by*

*the 15 & 16 Vict. c. 76, s. 18, against a resident in Guernsey, on a promissory note, for goods purchased here of the plaintiff, and which was made payable in London. The plaintiff had obtained an order for leave to proceed as if personal service had been effected, and had signed judgment: Held, that as there had been no appeal from this order it could not now be questioned, and a rule was refused to set aside such judgment.*

THIS was a motion for a rule nisi to set aside the judgment signed in this action, which was brought on a promissory note, dated at Guernsey, for goods purchased in this country of the plaintiffs by the defendant, who resided there, and made payable at Messrs. Delisle & Co., London. The writ was issued in the form prescribed by the 15 & 16 Vict. c. 76, s. 18,<sup>1</sup> and an order had been made for leave to proceed as if personal service had been effected, under which the judgment in question was signed.

*Field* in support, on the ground that the cause of action did not arise within the jurisdiction.

The Court said, as the Judge was satisfied that the cause of action arose within the jurisdiction, and the defendant had not appealed from such order to the Court, it could not now be questioned, and the rule would accordingly be refused.

<sup>1</sup> Which enacts, that "in case any defendant, being a British subject, is residing out of the jurisdiction of the said Superior Courts, in any place except in Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the schedule (A.) to this Act annexed, marked No. 2, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said Superior Courts; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the Court or Judge, upon being satisfied by affidavit that there is a cause of action, which arose within the jurisdiction, or in respect of a breach of a contract made within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said Courts in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case."

## ADVERTISEMENTS.

### BANK OF DEPOSIT, NATIONAL ASSURANCE AND INVESTMENT ASSOCIATION,

No. 3, Pall Mall East, London.  
Established, A.D., 1844.

### **PARTIES** desirous of INVESTING MONEY are requested to examine the Plan of this Institution, by which a high rate of interest may be obtained with perfect security.

The Interest is payable, in *January and July*, at the Head  
Office in London; and may also be received at the various  
Branches, or through Country Bankers.

PETER MORRISON, Managing Director.

Prospectuses and Forms for opening Accounts sent free on  
application.

### SPECIAL NOTICE

### **CLERICAL MEDICAL AND GENERAL LIFE ASSURANCE SOCIETY, 99, Great Russell- street, Bloomsbury, London.**

#### SIXTH DIVISION OF PROFITS.

All Persons who Assure on the Participating Scale before  
June 30, 1856, will be entitled to a Share of the SIXTH  
BONUS, which will be declared in the January following.

Proposals should be forwarded to the Office before June 1st  
next.

The Thirty-first Annual Report can now be obtained (free)  
of the Society's Agents, or of

Geo. H. PINCKARD, Resident Secretary.

The usual Commission allowed to Solicitors.

### **THE ASYLUM LIFE ASSURANCE OFFICE, 72, CORNHILL, LONDON.—Estab. 1824.**

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Policies on Healthy and Diseased Lives, at Home and  
Abroad, for Civil, Military, and Naval Employments.

The only Office on purely Proprietary principles, involving  
therefore no Partnership among Policy-holders.

For Prospectuses, Proposal Papers, &c., apply to

MANLEY HOPKINS, Resident Director.

Pembrokeshire.—Valuable Freehold Farm, near Pembroke,  
and desirable Marine Residences and House Property,  
at Tenby.

**MR. LEIFCHILD** is instructed by the  
Proprietor to SELL by AUCTION, at the Lion  
Hotel, Tenby, on Thursday, June 12, at 1 for 2, that im-  
portant FREEHOLD ESTATE, known as Red Down or  
Floyton Farm, in the parish of St. Florence, and abutting  
on the high road from Pembroke to Tenby; it contains 160  
acres of arable and meadow land, with good homestead,  
and is in the occupation of Mr. Griffiths. Also, in the parish  
of St. Mary, in the favourite watering-place and borough  
town of Tenby, Four very genteel Family Marine Resi-  
dences, containing basement, ground floor, and first, second,  
and third stories, with offices, gardens, and steps to the  
beach, at the end of St. Julian-street, near the pier and the  
castle, with delightful southern sea views towards St.  
Catherine's and Caldy Islands; they are held by Mrs.  
Ambrose Smith and Miss Millard. A valuable Plot of Build-  
ing Ground, in St. Julian-street, let to William Lock, Esq.;  
a Dwelling-house, in High-street, with part of a garden  
abutting on Crosswell-street, also let to Mr. Lock; Dwelling-  
house and Premises, in Frog-street, abutting on St. Mary's  
churchyard; and Dwelling-house and Premises, in Tower-  
hill, near High-street, both held by Mr. John Smith; Two  
Coach-houses, with yard and premises, in Frog-street,  
extending back to the town wall, held by Mrs. Falkner;  
Two Dwelling-houses and Premises, in South-parade, let to  
Mr. Lock; Dwelling-house, Yard, and Premises, in the  
Norton, held by Miss Richards; and a Plot of Accommoda-  
tion Land, held by Mr. Lock. All the foregoing property is  
let for various terms, and the present sale offers an un-  
usually safe opportunity for remunerative investments.  
Particulars and conditions of sale, with plans of the farm  
and lots, will be issued 21 days previous to the sale, and  
may be had at the place of sale; at the Lion Hotel, Pem-  
broke; at the Nelson Hotel, Milford; of James Summers,  
Esq., Haverfordwest; of T. L. Marriott, Esq., solicitor, 1,  
Lancaster-place, Strand; and at Mr. Leifchild's offices,  
62, Moorgate-street, London.

Woodside-house, Beaulieu-road, Norwood, a gentlemanly  
Residence, with rich pasture Land.

**MR. LEIFCHILD** is instructed to SELL  
by AUCTION, at Garraway's, on Tuesday, June 3,  
the above very excellent FAMILY RESIDENCE, which is  
most agreeably situated, in the best part of Norwood, front-  
ing the Beaulieu-road, and immediately opposite the central  
transept of the Crystal Palace. This truly desirable dwell-  
ing-house, which has been considerably enlarged and im-

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proved, and is now fit for immediate occupation, contains  
six bed rooms and dressing rooms, study, two elegant draw-  
ing rooms, spacious dining room, opening into a verandah,  
breakfast parlour, entrance hall, staircase, and water-closet,  
ale, wine, and coal cellars, kitchen, laundry, housekeeper's  
room, and store room, pantry, servant's bed room and wash-  
house, all well supplied with water; detached coach-house,  
three-stall stable, and loft, cow-house, and poultry-house.  
Woodside-house is approached by a carriage-drive through  
finely-timbered grounds; it stands upon a beautiful sloping  
lawn, which is bounded by luxuriant shrubberies and the  
extensive flower and kitchen gardens. A conservatory and  
greenhouse are attached to the house, and very large sums  
were expended by the late proprietor in extending and im-  
proving the grounds. Adjoining the entrance lodge, with  
valuable frontage to the Beaulieu-road, are two handsome  
enclosures of productive meadow land, and the entire prop-  
erty comprises 18a. 2r. 36p. The estate is held on a lease  
for lives, and is subject to an annual reserved rent of £1 13s.  
Particulars and conditions of sale, with a plan of the prop-  
erty, may be had 14 days prior to the sale, at Garraway's;  
of Messrs. Hughes, Kearsey, Masterman, and Hughes, solici-  
tors, 17, Bucklersbury; and at Mr. Leifchild's offices, 62,  
Moorgate-street, City, where only cards to view may be ob-  
tained.

Pembrokeshire.—Important Sale of Landed Estates.—Six  
capital Freehold Farms, containing 1,918 acres, in the  
vicinity of St. David's, Solva, and Fishguard.

**MR. LEIFCHILD** is instructed by the  
Proprietor to SELL by AUCTION, at the Mariners'  
Hotel, Haverfordwest, on Wednesday, June 11, at 12 for 1,  
the following valuable and desirable ESTATES, viz.,—  
Clicliffydd, in the parishes of Llanychaer and Pancheston,  
near to the capital market town and port of Fishguard,  
comprising the capital farms of Clicliffydd, Clynn, Vagwr  
Vrain east and Vagwr Vrain west, containing together  
1,536 acres of arable, meadow, and mountain lands, with  
finely timbered woods, along the valley of the Gwaen, now  
in the occupation of Messrs. John Meyler, Ebenezer Meyler,  
John Llewellyn, and David Davies. Also, Llecha, a desirable  
freehold farm, near the high road from Fishguard to St.  
David's, in the parish of Llanhowell, containing 196 acres of  
capital land, with water power for threshing, &c., now  
occupied by Mr. Stephen Thomas. Also, Trevauna, an  
excellent occupation, in the parish of Llanedeyr, near Solva  
and Whitechurch; it is held by Mr. Daniel Phillips, and  
contains 196 acres, with a good residence and newly-erected  
homestead. The foregoing farms are in an improving state;  
they are held at moderate rents, and the tenants are  
responsible and punctual. Particulars and conditions of  
sale, with plans of the farms, will be issued 31 days previous  
to the sale, and may be had at the Great Western Hotel,  
Fishguard; the Commercial Inn, St. David's; the Nelson  
Hotel, Milford; at the place of sale; of James Summers,  
Esq., solicitor, Haverfordwest; of T. L. Marriott, Esq.,  
solicitor, 1, Lancaster-place, Strand; and at Mr. Leifchild's  
land and timber offices, 62, Moorgate-street.

Capital Freehold Residence, with about 30 acres of superior  
meadow Land, at Harefield, Middlesex.

**MR. LEIFCHILD** is instructed by the  
Proprietor to SELL by AUCTION, at Garraway's, on  
Tuesday, June 3, at 12 for 1, in one or two lots, a very  
valuable and important FREEHOLD ESTATE, pleasantly  
situated on an elevated gravelly site, commanding pleasing  
and extensive views, in the parish of Harefield, and county  
of Middlesex. This desirable property comprises a spacious  
family residence, in perfect repair and condition, containing  
entrance hall, library, dining room, drawing room, and con-  
servatory; thirteen principal and secondary bed rooms, three  
water-closets, the usual suite of domestic offices, and conve-  
niences, ample stabling, loose box and coach-house, enclosed  
yard and outbuildings, kitchen garden and orchard. The  
house stands on a large lawn, sloping to the south, with par-  
terres, winding walks, and ornamental shrubberies and  
plantations, and it overlooks numerous enclosures of rich  
pasture land, which are well timbered, and supplied with a  
fine spring of water that rises near the house. The estate,  
which is freehold and tithe free, contains 48 acres and 11  
perches, and the only outgoings are £7 per annum for the  
land-tax, and £9 5s. for a freehold quit rent to the manor of  
Harefield. Nearly 14 acres of fine pasture land are held in  
addition to the above, and the purchaser shall take them at  
the rent paid by the vendor. This property is about 30  
miles from London, four from Uxbridge, three from Rick-  
mansworth, and 5 from the railway station at Watford; and  
while it possesses great attractions as a gentleman's resi-  
dence, it is equally eligible and valuable for building pur-  
poses. Particulars and conditions of sale, with a plan of the  
property, will shortly be issued, and may be had at the usual  
inns at Harefield, Uxbridge, Rickmansworth, and Watford;  
at Garraway's; of Messrs. Trinder and Eyre, solicitors, 1,  
John-street, Bedford-row; and at Mr. Leifchild's land and  
timber offices, 62, Moorgate-street, City.

## ADVERTISEMENTS.

Haverfordwest, Pembrokeshire.—Valuable House Property and Leasehold and Lifehold Estates, Five Public-houses, Shops, Warehouses, and Accommodation Pasture Land.

**MR. LEIFCHILD** is instructed by the Proprietor to **SELL by AUCTION**, at the Mariners' Hotel, Haverfordwest, on Wednesday, June 11, at 12 for 1, in numerous lots, the following important and eligible **PROPERTIES**, which are situate in the best parts of the capital market and borough town of Haverfordwest, within a short distance of the South Wales Railway Station; comprising a respectable Family Dwelling-house, with wine and spirit shop, on the east side of Castle-square, with brewery, yard, and back premises, held by Mr. Jenkins; desirable Business Premises, in the Friars, held by Mr. Jardine; spacious Storehouses and Warehouses on the west bank of the river Cleddan, let to Mr. W. Gough Griffiths; the Black Horse Inn, in Bridge-street, with its stabling, yard, and extensive premises extending to the river; Three Dwelling-houses and Shops, workshops, stabling, garden, &c., held by Mr. Barnard; Four Dwelling-houses, in Bridge-street, with chapel, workshops, and premises behind, abutting on the Hole-in-the-Wall, held by Mr. Lloyd; spacious Factory, workshops, yard, and premises, in the Hole-in-the-Wall, with river frontage, occupied by Messrs. Marychurch; the Stag Inn, in Bridge-street, held by Mr. Thomas Phillips, with the buildings and premises; roomy Business Premises, warehouses, and yard, in the rear of the Stag Inn; Dwelling-house, workshop, yard, and premises, in Bridge-street, extending to the river, occupied by Mrs. Beynon. Also, in the parish of Prendergast, and borough of Haverfordwest, the Commercial Inn, the Newport Arms, the Plume of Feathers, Nine Dwelling-houses and Premises, with yards and gardens, an enclosed Garden, and two valuable accommodation pasture fields, all adjoining and adjacent to the old bridge, on the east bank of the river Cleddan, and in the several occupations of Messrs. Barnard, Farrow, Mrs. Susan Griffiths, Messrs. T. James, W. Jenkins, Maddocks, Morris, Owen, Picton, and Thomas. These desirable properties are held, some from year to year, some on leases for various terms, and others on lives. They are well situate for business purposes, and they offer eligible opportunities for safe and profitable investments. Particulars and conditions of sale, with plans of the lots, will be issued 21 days previous to the sale, and may be had at the place of sale; at the Nelson Hotel, Milford; of James Summers, Esq., Haverfordwest; of T. L. Marriott, Esq., solicitor, 1, Lancaster-place, Strand; and at Mr. Leifchild's offices, 62, Moor-gate-street.

Putney.—Park-field Cottages and Villas.—Four pairs of semi-detached Houses, recently erected, and producing £300 per annum.

**CHINNOCK and GALSORTHY** will **SELL by AUCTION**, at the Mart, city, on Thursday, June 5, at 1, **THREE PAIRS** of semi-detached HOUSES, forming the eastern division of Park-field Cottages, situate close to the Upper Richmond-road, Putney, in a dry and healthy locality, on a gravelly soil; also Nos. 1 and 2, Park-field Villas, situate adjoining thereto; the whole let to highly respectable tenants, at moderate rents, producing £218 per annum, and held for a term of 94 years, at very low ground rents. May be viewed by permission of the tenants, and particulars obtained of Messrs. Robinson and Tomlin, solicitors, 48, Conduit-street, Hanover-square; at the Red Lion, Putney; and of Messrs. Chincock and Galsworthy, auctioneers and land agents, 28, Regent-street, Waterloo-place.

North Riding of Yorkshire.—Valuable Freehold Farm of 136 acres of capital Meadow and Arable Land, situate between Pickering and Kirby Moorside, 20 miles from York, and 20 from Scarborough.

**CHINNOCK and GALSORTHY** will **SELL by AUCTION**, at the Black Swan Hotel, York, on Saturday, June 14, at 2 o'clock, precisely (unless previously disposed of by private contract), the valuable **ESTATE** of 136 acres 1 rood 23 perches, known as Little Edstone Farm, consisting of 130a. 3r. 33p. of freehold land, in the township of Little Edstone, 32a. 1r. 16p. of freehold land, in the township of Kirby Moorside, and 2a. 0r. 14p. of land, leasehold for 999 years, in the township of Kirby Moorside, all in the North Riding of the county of York, about 36 acres being rich pasture and the remainder productive arable land, in a high state of cultivation, with a good homestead, consisting of a stone-built farmhouse and substantial out-buildings, in excellent repair, and situate in a highly improving part of the county, near the high road, seven miles from Pickering, three from Kirby Moorside, about 20 miles from York, and the same from Scarborough, and within seven miles of a railway station on the Malton and Whithy Railway. The estate is in the occupation of Mr. William Cussans, as yearly tenant, at the low rent of £200 per annum. Particulars, with plans, may be obtained of Messrs. Pickering, Thompson, and Co., solicitors, 4, Stone-buildings, Lincoln's-inn; Messrs. Burley and Carlisle, solicitors, 8, New-square, Lincoln's-inn; at the Black Swan Hotel, York; the Talbot Inn, at Malton; White Horse Inn, Kirby Moorside; and of Messrs. Chincock and Galsworthy, auctioneers and land agents, 28, Regent-st., Waterloo-place.

**LAW PARTNERSHIPS** confidentially negotiated in all parts of England by **MR. L. LAIDMAN**, Law Agent, No. 100, Chancery Lane, London. No Commission charged unless a partnership effected. No entrance fee.—Managing Clerks, suitable for every department, can be had upon application.

**PARNELL'S PATENT UNIVERSAL LOCKS** (which cannot be picked), are the **SAFEST and CHEAPEST**. Made of all sizes and for every purpose. Street or office-door latches with two small keys, 10s. Drawer, box, or cupboard, with two keys, each 5s.—Despot, 283, Strand, opposite Norfolk-street, near Temple-bar, London. Fire-proof Safes, Deeds and Cash-boxes. Descriptions and List of Prices may be had upon application.

**LAW GOWNS, 30s. and 42s.**, may be obtained of **FRANK SMITH and Co.**, Clerical, Academical, State, and Law Robt. Makers, 13, Southampton Street, Strand, London. List of prices and directions for measurement, &c., sent on application.

**IMPORTANT to Barristers, Solicitors, and** Gentlemen connected with the Law.—**J. WEBB**, from the knowledge of the fact that first-rate accommodation is much wanting in and about the neighbourhood of the Inns of Court, has been induced to fit up a most comfortable Saloon on the first floor, where every article served will be of the finest quality. *Café au Lait, Chocolate, Soups, Entrees, Chops, Steaks, &c.* Daily and Evening Papers, Chess, Draughts, &c. Luncheons and Dinners sent to Chambers.—**WEBB**, Cook and Confectioner, corner of Chancery Lane, Holborn.

**CHANCERY FORMS** prepared and sold by **JAMES SULLIVAN**, 22, Chancery-lane.

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To Assign Guardian—Of Creditor's Claim—Of Service of Interrogatories—Of Service of Spa. for Costs—Of Service of Petition—Of Service of Spa. to hear Judgment.—To obtain Distingas to retain the Sale of Stock—Of Service of Administration Summons—Of Service of Bill or Claim—Of Service of Summons originating Proceedings, not being an Administration Summons—Of Correctness of Receiver's Accounts—Of Next of Kin—To appoint Receiver—On Production of Documents.—And Claim with Security—Ditto without—Verifying Biddings at Sale.

Account Sheets—Appearance—Advertisement for Creditors Attachment—Clause List—Distingas on Stock, Notice, and Affidavit—Executors' Account Sheets—Fl. Fa. for Payment of Money—Fl. Fa. for payment of Costs—Habeas Corpus—Injunction and Copy—Lunacy Warrant—No Exeat Regno—Notice to attend Examiner—Ditto to Settle Minutes—Ditto to having Filed Answer—Ditto to Move for Decree—Ditto to pay in Purchase Money—Ditto to Dividend payable

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Bills and Claims in Chancery printed with accuracy and expedition; by **J. SULLIVAN**, 22, Chancery-lane.

L. O. AD., MAY 17, 1856

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, MAY 17, 1856.

PROPOSED  
NEW COURTS AND OFFICES,  
AND  
GREAT CENTRAL STREET.

THERE are several strong points in favour of an early commencement of the proposed New Metropolitan Courts and Offices for the administration of justice.

The completion of the Houses of Parliament is rapidly approaching, and the space occupied by the inconvenient, small, and insufficient Courts, adjoining one side of Westminster Hall, must soon be imperiously required.

Then a central street extending from the north side of St. Paul's Cathedral to Long Acre, is loudly demanded for public traffic, —and on the south side of that great thoroughfare might be conveniently placed the new Courts and Offices.

Further, whilst this central street ought to be defrayed by the public, the cost of the site and buildings for the new Courts and Offices might be properly supplied from the surplus interest fund in the Court of Chancery.

The war, which afforded an excuse or justification for delaying all expensive improvements, is now happily terminated, and above all other measures, the claims in behalf of the administration of justice stand pre-eminently forward. Amongst the numerous projects for cheapening and expediting the proceedings in the Superior Courts, we think that the concentrating under one roof all the Courts of Law and Equity, with the several offices attached to them, would, in an eminent degree, tend to facilitate the despatch of legal business and save the time of the practitioners.

After the lapse of several years, since the removal of the Courts was first proposed, the Equity Judges now sit permanently in Lincoln's Inn and Rolls Yard. The Com-

mon Law Judges, Barristers and Attorneys still wend their way to Westminster Hall in "the time of Term," and at the sittings after. We need scarcely remind our legal readers that this ancient locality is far away from the Inns of Court and Chancery, the Offices of the Courts, and the Chambers of the Judges, the Bar, and the Attorneys; — that the Courts at Westminster occupy the small space of half an acre, that nearly three acres are required to construct proper and convenient Courts and Offices, and no such space can be found in the vicinity of the Hall of Rufus; — that consequently an entire removal must soon take place, and beyond all doubt, both public and professional convenience require that the new edifice should be placed between the Temple and Lincoln's Inn.

Then the Law and Equity Offices are scattered in various parts of the legal district, namely, in divers parts of

The Temple,  
Lincoln's Inn,  
Chancery Lane,  
Rolls Yard and Gardens,  
Serjeants' Inn,  
Southampton Buildings,  
Staple Inn,  
Quality Court,  
Lincoln's Inn Fields,  
Portugal Street,

and other places, some of them far distant. To make the round of these offices of justice would occupy an hour or more, and if business must be transacted at several of them, the running to and fro to find the officer at leisure for the business in hand, may exhaust half a day. It is palpable that the offices should surround the Courts. The practitioners and their clerks, whilst waiting for the trial of actions or the hearing of causes or motions, would be enabled to attend the Judges at Chambers, the Masters and Chief Clerks and other functionaries; and thus it would often happen



that the saving of a day would save a term or an assize.

We observe that a new project has recently been started to unite with the central street, so long required, a sub-railway under the street, with provision for laying down water and gas pipes, and enabling them to be repaired and kept in order without disturbing the surface of the street.

By this plan it is proposed to construct under a new street from Cheapside to Long Acre, two subways, each containing an up and down line of rails. On reaching Long Acre, it is proposed, to continue one line under Long Acre, Leicester Square, Coventry Street, and Piccadilly to Hyde Park-corner. The other line from Long Acre under Endell Street, High Street St. Giles's, and Oxford Street, to Cumberland Gate.

Thus the two lines of sub-railway will proceed from Cheapside, side by side, under the new street to the corner of Bow Street and Long Acre, then branch off to the northern and southern sides of Hyde Park.

Contiguous to the sub-railways, and on each side, it is proposed to build chambers to hold the gas and water mains, telegraphic wires, &c.: to be of such height that persons may pass along to move the pipes therein. The sewers may be constructed under these chambers, but apart from, and impervious to, the subway.

The promoters have addressed a memorial to the Metropolitan Board of Works, in which they state that these improvements, if applied to new streets north and south of the Thames, but especially to that which has been recommended by Parliament, between the eastern and western parts of the metropolis, will afford those increased facilities of transit so much needed, and render unnecessary that continued interference with the surface of the streets, which is becoming so intolerable.

These improvements comprise the construction of a new street running from Cheapside to the corner of Bow Street and Long Acre; whether by Lincoln's Inn Fields, or by Carey Street, or as the promoters suggest, *southwards* of Carey Street, through the Rolls Gardens, and south of the Record Office. And they conceive that this new street might be relieved of a considerable portion of the deficit accruing from the cost of the property for the same, after sale of the frontages, by co-operating with the New Law Courts Committee, who, under the plan of Sir Charles Barry, are desirous of removing the Courts from Westminster to a site bounded by the new street, on the north, Chancery Lane on the east, and the Strand on the south.

The promoters of this plan propose that the Suitsors' Accumulation Fund, set apart by several Acts of Parliament for these Law Courts improvements, might be applied in the purchase of a portion of the ground requisite for the new street.

By these means, it is thought, the new street might be constructed without, in any important degree, rating or taxing the public for this improvement.

The promoters also contend that as by the new street, constructed on a level by a viaduct over Farringdon Street and avoiding the Holborn and Fleet Hills, a new passage will be afforded to the public,—so by the sub-railway a larger portion of the vast crowds passing east and west may be carried from the existing thoroughfares with comfort and great economy of time and expense.

It will be observed that the proposers of this metropolitan subway are in favour of a line of street quite inconsistent with the suggested site of the new Courts. Instead of placing the Courts between the Temple and Lincoln's Inn, the subway promoters would carry the new street through the midst of Sir Charles Barry's proposed site. The objections to this line of street seem to be insuperable. Instead of taking the line contemplated (as we believe) both by the Government and the City of London, on the north side of the great Record Repository, along Carey Street, and through Clare Market, the Subway Company would abandon the advantage of taking Carey Street as part of the line, and cut through the Rolls Gardens (all of which are required for the Public Records:)—or, if the line proceeded lower down, it must take nearly the whole of Serjeants' Inn and Clifford's Inn, and run, within a few yards, side by side with Fleet Street. Now, the public want a middle or central street, passing at nearly equal distance between Fleet Street and Ludgate Hill on the south, and Holborn and Snow Hill on the north.

This line would also destroy part of Clement's Inn and New Inn, and we must protest against a project which would thus unnecessarily encroach upon and injure three of these ancient Inns of Chancery. The primary objection, however, is, that it would altogether defeat the plan of the New Courts and Offices.

The site chosen for them,—having the Strand on the south, Lincoln's Inn on the north, Chancery Lane on the east, and Clement's Inn and New Inn on the west,—is immeasurably the best possible position for the proposed structure. By an archway which might be constructed in the place of the present and form a new Temple Bar, the lawyers might pass readily to the new Courts and the public convenience also be promoted, in crossing that crowded part of the metropolis.

We presume the Profession would have

no objection to the plan of the metropolitan subway, if it were made to accord with the views which prevail regarding the site of the Courts, and we trust the promoters of the subway will modify their design, and "co-operate with the New Law Courts Committee."

## PROCEDURE AND EVIDENCE BILL.

THIS Bill, which has been introduced by Sir Fitz Roy Kelly, proposes to enact as follows :—

1. Sects. 20 to 27 and 103 of 17 & 18 Vict. c. 125, as to affirmations in lieu of oaths; discrediting witnesses; cross-examination; and calling attesting witness; extended to all Courts of Justice.

2. It is also proposed to repeal so much of 14 & 15 Vict. c. 99, as enacts that nothing therein contained shall apply to any action, suit, or proceeding in any Court of Common Law instituted in consequence of adultery, or to any action for breach of promise of marriage.

3. Also to repeal section 36 of 18 & 19 Vict. c. 96, as to giving evidence.

4. Any fact may be proved or disproved in any suit, action, or proceeding, whether civil or criminal, in any Court of Judicature, by the uncorroborated testimony of a single witness, if such testimony be deemed worthy of credit; but this enactment shall not apply to any prosecution for high treason or to orders of affiliation.

5. In every suit, action, or proceeding, whether civil or criminal, in any Court of Judicature or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, wherein any person subject to the Bankruptcy Laws, or his executors, administrators, or assignees, shall be a party, the books of account of such person shall, if the entries therein can be proved to have been made either by himself or by some clerk or agent of his whose absence is satisfactorily accounted for, be receivable on behalf of such person or his representative as some evidence of the truth of the matters therein contained; provided such books or the entries in question shall appear to the Judge or other presiding officer to have been made and kept fairly, and with a reasonable degree of regularity.

6. Writs of subpoena ad testificandum, writs of subpoena duces tecum, and writs of mandamus may respectively be issued and tested on any day, whether in Term or in Vacation.

7. The 17 & 18 Vict. c. 34, extended to other Courts besides the Superior Courts of Common Law.

8. All Courts in England which are authorised to issue process within the limits of their respective jurisdictions for the purpose of enforcing the attendance of witnesses or the production of documents are hereby empowered

to issue such process into any part of England; and any such process being served in any part of England shall be as effectual for all purposes as if it had been served within the jurisdiction of the Court from which it issues.

9. All Courts in Ireland which are authorised to issue process within the limits of their respective jurisdictions for the purpose of enforcing the attendance of witnesses or the production of documents are hereby empowered to issue such process into any part of Ireland; and any such process being served in any part of Ireland shall be as effectual for all purposes as if it had been served within the jurisdiction of the Court from which it issues.

10. Disobedience to process issued by inferior Court beyond its jurisdiction punishable in Superior Courts of Common Law by attachment.

11. No witness shall in any suit, action, or proceeding, whether civil or criminal, to which he is not a party, be permitted to refuse to answer any question which is relevant and material to the matter in issue, on the ground that the answer may expose him to any penalty or forfeiture, or may otherwise criminate himself, unless the Judge or other presiding officer shall be of opinion that the answer will tend to subject such witness to punishment for a felony.

12. Sect. 18 of 11 & 12 Vict. c. 41, in part repealed.

13. No confession which is tendered in evidence on any trial shall be rejected on the ground that a promise or threat has been held out to the person confessing, unless the Judge or other presiding officer shall be of opinion that the inducement was really calculated to cause an untrue admission of guilt to be made.

14. No confession which is tendered in evidence on any trial shall be rejected on the ground that it purports to have been made on oath, if proof can be given to the Judge or other presiding officer that in fact it was not so made.

15. No clergyman shall, without the consent of the person making the confession, divulge in any suit, action, or proceeding, whether civil or criminal, any confession made to him in his professional character, according to the usage of the church to which he belongs.

16. No physician, surgeon, or apothecary shall, without the consent of his patient, divulge in any civil suit, action, or proceeding, unless the sanity of the patient be the matter in dispute, any information which he may have acquired in attending the patient, and which was necessary to enable him to prescribe or act for the patient.

17. Sect. 17 of 11 & 12 Vict. c. 42, and Sch. (M.) of same Act, and Part of Sect. 14 of 14 & 15 Vict. c. 93, and Sch. (A b.) of same Act repealed and annulled. Depositions of witnesses who have died.

18. When any person shall appear or be brought before any justice of the peace charged with any indictable offence, such justice, before committing him for trial or admitting him to

bail, shall in his presence take the depositions on oath, and in writing, of the witnesses, which depositions may be in the form given in the Schedule to this Act or to the like effect, and shall allow the accused or his counsel or attorney to cross-examine the witnesses; and any such deposition shall be read over to the deponent, and shall be offered to him for signature, and either it or the whole body of the depositions shall be signed by the justice; and if upon the trial of the accused any deponent shall be proved to the satisfaction of the Court to be either dead or out of the United Kingdom, or unable, from permanent sickness or other permanent infirmity, to attend the trial, or fraudulently or forcibly kept out of the way by the accused, his deposition, provided that either it or the whole body of the depositions purport to be duly signed by such justice, shall be admissible as evidence in such prosecution, unless the accused can prove to the satisfaction of the Court either that the deposition in question was not taken on oath, or that it was not taken in his presence, or that it was not read over to the deponent, or tendered to him for his signature, or that neither it nor the whole body of the depositions was signed by the justice, or that the accused or his counsel or attorney had not a full opportunity of cross-examining the deponent.

19. The Court before which any person shall be prosecuted for any indictable offence may, if it thinks fit, in the event of the grand jury ignoring the bill of indictment against him or of his being acquitted at the trial, order payment to him of such money as to such Court may seem reasonable, to reimburse his witnesses for their expenses, and to compensate them for their trouble and loss of time in attending the Court; and such order for payment shall be forthwith made out and delivered by the proper officer of the Court to the defendant or his attorney or agent, free from all expense, and shall be made upon the treasurer of the county or other person upon whom orders for payment of the costs of prosecutions may legally be made; and such treasurer or other person shall, upon sight of every such first mentioned order, pay to the defendant or his attorney or agent the money named therein, and shall be allowed the same in his accounts.

20. In all prosecutions for felony, the Court in which the trial is had shall, if required by the prisoner, order a copy of the indictment or information to be delivered to him or his counsel or attorney at the trial, free from all expense, provided that the prisoner or his counsel or attorney shall not have previously received a copy thereof.

21. In every action, suit, or proceeding, whether civil or criminal, which shall henceforth be either instituted or defended in any Court of Judicature by or on behalf or at the instance of the Crown, the law officers of the Crown, and those who represent the Crown shall not enjoy any other right to begin or right to reply than those rights respectively

which belong to counsel representing ordinary suitors.

22. It shall not be necessary in any criminal prosecution, except as hereinafter excepted, either to aver in the indictment or information, or to prove at the trial, that the offence alleged to have been committed was committed, in any particular parish, township, village, or other local district less than a county, but this enactment shall not apply to any prosecution for the non-repair of a road or bridge, or to any prosecution for transgressing a Statute which gives the penalty imposed by it to the poor of the parish or other local district in which the offence has been committed.

23. Enactments respecting payment of money into Court repealed.

24. In all personal actions, except actions for criminal conversation, and except such actions as in the next section are mentioned, the defendant, or one, or some, or all, of several defendants, may, without applying for any rule or order pay into Court money by way of compensation or satisfaction, either with respect to the whole or to part only of the plaintiff's claim.

25. In all actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, or debanching of the plaintiff's daughter or servant, the defendant, or one, or some, or all of several defendants, may, by leave of the Court or a Judge, upon such terms as the Court or Judge may think fit, pay into Court money by way of compensation or satisfaction, either with respect to the whole or to part only of the plaintiff's claim.

26. Form of plea of payment into Court.

27. The plea of payment into Court may be pleaded either alone or with any other plea.

28. Money paid into Court shall be paid to the proper officer of the Court, who shall give a receipt for it on the margin of the plea, and it shall thenceforth be the property of the plaintiff, and shall be paid out to the written order of him or his attorney, on demand, whatever may be the event of the suit.

29. To a plea of payment into Court the plaintiff may either reply that he accepts the money, and in that case his claim in respect of the matter to which the plea is pleaded shall be deemed satisfied, and he may then tax his costs, and if they be not paid within 48 hours after taxation sign judgment for them, or he may reply that the money is not enough to satisfy his claim in respect of the matter to which the plea is pleaded; but if the issue to this replication be found against him, the request shall be entitled to judgment and costs.

30. The last six preceding sections shall apply only to actions brought in one of the Superior Courts of Common Law in England or Ireland.

31. The payment of money into Court by any defendant, whether generally or partially, or on some special count, shall not be deemed an admission by him that any cause of action existed against him, or that he was legally bound to have paid anything.

32. No person shall be liable to pay any simple contract debt incurred by a partnership after he shall have ceased to be a member thereof, if he can prove that his partnership was dissolved more than six years before the commencement of the action or suit for the recovery of such debt.

33. No partner or joint contractor, or the executor or administrator of any partner or joint contractor, shall lose the benefit of any Statute of Limitations by reason of any oral acknowledgment by his copartner or co-contractor, either of payment of the interest or of part payment of the principal of any debt incurred by the partnership or by the joint contractors.

34. All Statutes of every description, whether declaratory, remedial, enabling, enlarging, restraining, or penal, shall be reasonably construed, and so as most effectually to suppress the mischief aimed at, and to advance the remedy intended to be supplied.

35. No written instrument shall be rendered void by any obliteration, cancellation, spoliation, or other alteration, except so far as the words or effect of the instrument before such alteration shall not be apparent, if the party relying upon the instrument can prove that such alteration was the effect of accident or mistake, or was wrongfully made, without his privity or consent, by some person over whom he could exercise no control.

36. Parol evidence shall be admissible in Courts of Equity on behalf of a plaintiff, for the purpose of rectifying a written agreement of which he seeks a specific execution.

37. A special promise made either by an executor or an administrator to answer damages out of his own estate, or by any person to answer for the debt, default, or miscarriage of another, if reduced to writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised, shall be binding in law, though the consideration of the promise be not set forth in the writing, provided that such consideration can be otherwise proved.

38. Every document the validity of which depends upon its being signed by some particular person may be signed either by such person or by his authorised agent, and the authority by the principal to the agent to sign any document in the name or on behalf of the principal may in all cases be granted orally as well as by writing.

39. The acts of an agent done after the death of his principal shall, if done *bonâ fide* and in ignorance of such death, be deemed as valid in law and be as binding on the heirs and personal representatives of the principal as if they had been done during the life of the principal.

40. The acts of a deputy done after the death of the person whose duties he has been appointed to discharge shall, if done in ignorance of such death, be deemed as valid in law as if they had been done during the life of such person.

41. Every deed purporting to be executed by a sheriff in discharge of his official duty shall, *primâ facie*, be admissible in evidence, on proof that it was executed in the name of the sheriff by some person acting as his under sheriff.

42. Every Court of Record may, on the application of any party to any action, suit, or proceeding, whether civil or criminal, therein pending, order, on such terms as to costs or otherwise as it shall think fit, the inspection by such party or his witnesses, or by the jury, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute; and in all the trials by jury the Judge or other presiding officer may order such inspection as aforesaid by the jury, even after the evidence on one or both sides has been closed, if in his opinion such a course be necessary for the attainment of justice.

43. The rule of law which presumes that a wife who commits offences in the presence of her husband acts under his coercion is hereby repealed and annulled.

44. This Act shall extend to England and Ireland, but shall not extend to Scotland, except so far as relates to section 7.

### THIRD REPORT OF THE CHARITY COMMISSIONERS.

*To the Queen's Most Excellent Majesty.*

May it please your Majesty,

We, the Charity Commissioners for England and Wales, are required to make a Report to your Majesty of our proceedings during the year 1855.

It will be convenient to state briefly the powers which may now be exercised by our Board under the Charitable Trusts Act, 1853, and the amending Act of the last Session of Parliament, and to classify by reference to them such of the matters upon which we have been principally engaged as can conveniently be arranged in that manner.

We have extended powers of requiring information from the trustees of charities and their agents and the recipients of charitable funds, subject to an exemption of all persons claiming property adversely to any charity from inquiry relating to such property.

We are enabled to give advice and direction to the trustees of charities, who are protected from responsibility in acting upon our opinion; but the direction has otherwise no authority, and may be repudiated by all or any of the trustees as they may think fit.

The right of private persons to institute legal proceedings on behalf of charities is placed under our control; and it is our duty to prescribe and regulate the publication of notices of all proposed applications to the Courts for the appointment or removal of trustees or the establishment of schemes under the summary jurisdiction created by the Act of 1853. Our approval also is requisite to the

validity of orders made by the County Courts or District Courts of Bankruptcy for the same purposes.

For enforcing the due application of the funds of charities, or the recovery of their rights, or procuring for them administrative relief, we are enabled to certify to the Attorney-General cases in which we consider it desirable that legal proceedings should be instituted by him *ex officio* for such objects. This is the only mode open to us of attaining them where no persons are disposed to undertake the necessary proceedings before the Courts upon their own responsibility, or it is inexpedient that private parties should conduct such proceedings.

We have very beneficial powers to authorise sale, exchanges, leases, and improvements of charity estates; and we may sanction the redemption of rents charge, the compromise of disputed claims, and the removal of schoolmasters and other officers, though our warrants for these purposes are not imperative on any persons. The Act of the last Session has afforded also to charities an important protection against improvident leases and alienations of their estates, by prohibiting such dispositions for terms exceeding those of ordinary occupation leases, unless made with the authority of our board or under parliamentary or judicial sanction.

The same Act contains a provision under which we may authorise the transfer of charitable funds to the official trustees by any trustees or other persons holding such funds, and willing to adopt that course.

We may apportion any charities of a parish divided into districts between such districts, if the annual incomes of such charities do not exceed 30*l*.

We are empowered to propose for the sanction of the legislature schemes for the improved application of charities, where the same objects are beyond the jurisdiction of the Courts.

Finally, we receive the annual statements of account directed to be made by all trustees of charities, though we have no direct means of enforcing their delivery.

Having stated the extent of our actual powers, we proceed to report the matters within the limits of our corresponding duties, by which we have been principally occupied.

The number of special applications made to our board during the past year (bringing before us the circumstances of different charities and groups of charities for very various purposes) has been 864, making the whole number of such applications filed in our office during the period of somewhat more than two years, which has elapsed since the commencement of our duties, to be 2,274.

The objects of these applications received during the past year may be classified as follows:—

For advice and direction to the trustees of charities . . . . . 267

For authorities to effect sales and exchanges . . . . .	73
To grant mining, improving, and other leases . . . . .	45
To make outlays on improvements and to raise funds for those purposes . . . . .	35
For the apportionment of charities . . . . .	7
For the removal of schoolmasters and other officers of charities . . . . .	4
For aid in the recovery of rents' charge . . . . .	13
For inquiry and general relief, for authorities to proceed before the different Courts, and for other objects not falling within the preceding divisions, and which it would be very difficult and unprofitable to classify with exactness . . . . .	420

The facility with which our office may be referred to by all persons interested in charities, and which we desire to promote to the utmost practicable extent, will probably cause it to be largely occupied at all times by such applications; and without the means of instigating any systematic or comprehensive inspection of charities, we must rely much on the information which we either obtain directly by means of such communications, or to which they conduct us, for guidance in the discharge of our duties. Such information becomes progressively very extensive; and it may be stated incidentally, that we have already had occasion to ascertain and register the particulars of more than 3,000 charitable foundations, which, either as founded subsequently to the Reports of the former Commissioners of Inquiry, or as having been exempted from or escaped their inquiries, are not included in their printed Reports.

The consideration of the subject-matters of the applications referred to, and the inquiries, correspondence, and proceedings connected with them, have largely occupied our time and attention, and our utmost exertions have been required to prevent the accumulation of business arising from this source.

This business is necessarily conducted in a principal degree by correspondence, and in very numerous cases is concluded without any orders under our seal; and in particular the questions referred to us by the trustees of charities for their guidance are frequently disposed of in the result of communications with themselves and other proper parties by the official letters of our Secretary, written under the direction of the Board.

It may, however, be convenient to state the relative numbers of orders under our official seal for different purposes during the year.

The number of orders authorising applications to the Court of Chancery is found to have been . . . . .	88
The same to the County Courts . . . . .	79
The same to other Courts . . . . .	5
The orders certifying cases to the Attorney-General . . . . .	14
The orders prescribing notices of applications proposed to be made to the Court of Chancery for the appointment or re-	

removal of trustees or the establishment of schemes under the summary jurisdiction . . . . .	61
The same, of similar applications proposed to be made to the County Courts . . . . .	86
Confirmations of orders of the County Courts made for the like purposes . . . . .	62
Orders conveying advice to trustees upon questions involving their direct pecuniary responsibility, and sealed for their security . . . . .	51
Orders authorising the sale of charity estates . . . . .	40
Exchanges . . . . .	4
Building, mining, and other leases . . . . .	25
Improvements, and the raising or appropriation of the necessary funds . . . . .	21
Removal of schoolmasters or other officers . . . . .	3
The compromise of claims . . . . .	1
Transfers of stock or money to the official trustees of charitable funds . . . . .	26
Orders requiring information compulsorily from trustees . . . . .	22
For miscellaneous purposes . . . . .	20

No authority has been required from us for any application to be made to the District Courts of Bankruptcy.

It is also observable, that from the commencement of our duties the applications from private persons for authority to institute contentious litigation on behalf of charities (commonly described as *relators' suits*) have been extremely few. It may probably be assumed to have been a principal object of the Legislature in placing us under a responsibility for controlling applications to the Courts, that a check might be placed upon the institution of suits of this class, which have not infrequently had the effect of absorbing the whole funds of charities in the cost of ill-advised or reprehensible proceedings; but to whatever cause the fact may be attributable, the occasions for the exercise of our judgment upon the propriety of commencing such suits have been most rare. During the last year we have received only one such application, which is at present the subject of some pending inquiries.

Further experience has confirmed us in our estimate of the very beneficial effect of our authority to direct and indemnify trustees by our advice in cases of doubt or difficulty; but we have reason to think that its benefit would have been greater if the law had given to our direction (at least when adopted by a majority of the trustees) a binding effect, until reversed or varied by a competent Court.

The facilities for granting leases and effecting improvements of charity estates under the order of our Board are found to be productive of great advantage and convenience. The orders for these purposes, which before the institution of our Commission could only be obtained at considerable cost from the Court of Chancery, have been for the most part made by us with little or no expense to the charity, our requisitions in these cases being usually restricted to the production of such evidence of the expediency of the proposed

transactions, as the trustees in the prudent administration of the property should ordinarily require for their own guidance. The duty imposed on us by the Act of the last Session, of exercising a supervision over the grant of all beneficial or extended leases of charity estates will rapidly extend this department of our duties, and we are already experiencing their pressure.

We have no doubt that the exercise of the powers referred to, and of this salutary control, will result in a considerable increase of the income, and in extensive improvements of the condition, of very many charity estates.

Orders authorising the sale of estates of charities have been made by us in 40 cases during the year, the number of applications made to us for this purpose having been 73.

When the property of charities is in a dilapidated or deteriorating condition, and no sufficient funds are available for its repair or maintenance, or where local or other circumstances render its alienation desirable, or the sales may be productive of any considerable pecuniary advantage to the charities, we have readily authorised such transactions. It will also be very satisfactory to us if we can induce a much more general redemption by land owners of small rents charged on their estates for the benefit of charities than has yet been effected. These charges constitute very ineligibile endowments of charities, being unimprovable and of declining value, while their recovery becomes in very numerous cases difficult and precarious, and their payment is sometimes resisted under an undisguised reliance on the difficulty of its enforcement.

It is, however, generally inexpedient to permit the conversion of the real endowments of charities into personalty, and our orders authorising sales are in all ordinary cases accompanied by a condition imposed on the trustees, that the purchase-money shall be re-invested in land at the earliest opportunity under our direction.

The instances in which we have sanctioned exchanges are very few. Our orders have not the effect of transferring the titles of the properties exchanged, which is the operation of orders made for the same purposes by the Inclosure Commissioners, whose concurrent jurisdiction is for this reason more beneficial and inexpensive. We have felt it necessary in some cases to require that applications for our warrants to effect exchanges should be referred to the consideration of the Board of the Inclosure Commissioners, and in the present state of the law we apprehend that this practice must be frequently adopted. We are not empowered to sanction partitions of charity estates.

The Act of 1853 requires notice to be given under the direction of our board of all applications to the Judges of the Court of Chancery, or the County Courts, for the appointment or removal of trustees or the establishment of schemes. We find that in the result of these notices there occur to us frequent opportu-

ilities of removing differences or settling questions which might otherwise be made the subject of contest or discussion before the Courts, and our certificates are suspended as far as may properly be done for facilitating such arrangements.

[To be continued.]

## SALE OF ADVOWSONS BILL.

By this Bill it is intended to enable Parishioners and others, forming a numerous Class, to sell Advowsons held by or in trust for them, and to apply the Proceeds in providing Parsonage Houses, augmenting small Livings, and to other beneficial Purposes; and for giving other Powers to such Persons. Section 1 assigns interpretations to the words *advowson*, *owners*, *existing trustees*, *elected trustees*, *trustees*, and *incumbent*. The enactments are in substance as follow:—

The owners of an advowson may direct the sale of such advowson, and the incumbent for the time being of the church or benefice, if required in writing by 10 owners, shall convene a meeting of the owners, to be held at some convenient place near to the church, for the purpose of deciding whether or not such advowson shall be sold; and every such meeting shall be called by public advertisement, to be inserted once at least in four consecutive weeks in some newspaper circulating in the county and neighbourhood in which such church shall be situate, the last of such insertions being not more than 14 nor less than seven days prior to any such meeting, and notice of such meeting shall also, not less than 14 days prior to the holding thereof, be affixed upon the door of such church; sec. 2.

At the meeting so called the incumbent for the time being (if present) shall be the chairman, and if he be absent, then one of the owners present, being appointed by the other owners present, shall be the chairman, and the decision of the majority of the owners then present shall bind the minority and all absent parties; s. 3.

Meeting to decide question of sale, and if decided in affirmative to appoint elected trustees; s. 4.

Certificate by two justices of consent of owners being obtained, and of names (if any) of elected trustees, to be sufficient evidence; s. 5.

If determined to sell advowson, same to become absolutely vested in trustees, and trustees to proceed to a sale; s. 6.

Conveyance of the advowson; s. 7.

Receipts of trustees to be sufficient discharge; s. 8.

The moneys to be received by the trustees from or by means of such sale shall be applied by them in the following order:

1st. In payment of the costs, charges, and expenses occasioned by any meeting of owners as aforesaid, and by the execution

of the powers by this Act conferred upon the trustees, or incident thereto, respectively:

2nd. If there be no parsonage house attached to the advowson so sold, or if the parsonage house attached thereto be dilapidated or insufficient, then in payment of the expenses of erecting a parsonage house, and of providing a site for the same, or in the reconstruction or repair of the existing parsonage house, or in making any requisite additions thereto, as the circumstances of the case may require:

3rd. If the living be under the gross yearly value of 150*l.*, then in investing a sum sufficient to produce an annual income which, together with the existing annual income, will raise the yearly value of the living (exclusive of the parsonage house) to not exceeding 150*l.* per annum:

4th. If the fabric of the church be in such a state as to require immediate repair, then in the expenditure upon the fabric of a sum sufficient to place the same in sufficient repair:

5th. In the investment of a sum, the annual income whereof will, in the opinion of the trustees, be sufficient to maintain the fabric of the church in complete repair:

6th. In the erection of schools in connexion with the church, or of a chapel of ease in the parish, township, ecclesiastical district, or place in which such church is situate, or of a parsonage house to a chapel of ease, or in providing a site for a chapel of ease or parsonage house, or in the endowment of a chapel of ease, or in contributing to such objects or any of them, as the trustees may in their discretion see fit:

7th. If there be no such purposes to which such moneys are applicable, or if there be a surplus of such moneys after answering such purposes, then such moneys, or the surplus thereof, as the case may be, shall be invested, and the annual income thereof shall be applied in aid of the rates levied for the relief of the poor of the parish, township, or place in which the church is situate, or in aid of any improvement rate levied therein; s. 9.

The trustees shall from time to time invest any moneys by this Act directed to be invested by them in the purchase of any Government or Bank of England or East India Company's Stock or Securities, or on mortgage of freehold or copyhold lands in England or Wales, or in the mortgages of bonds of any company incorporated by special Act of Parliament, as they may deem fit; s. 10.

The concurrence of two-thirds at least of the whole number of trustees shall be necessary to give effect to any resolution of the trustees, and every resolution of the trustees in which that number shall concur shall be binding upon the other trustees and upon the owners on whose behalf such trustees are authorised to act; s. 11.

If any of the trustees, before the complete execution of the trusts by this Act devolved upon them, should become incapable or unwilling to act or reside abroad, the vacancies may, in the case of existing trustees, be supplied in the manner provided by the Act of Parliament, deed, or instrument regulating their proceedings; and in the case of elected trustees the vacancies may be supplied by the owners at any meeting convened and held in manner herein-before provided with respect to the convening and holding of a meeting of owners for the purpose of consenting to the sale of an adwoson; and a certificate of two such justices as aforesaid, and which such justices, on being satisfied of the truth of the facts, are hereby authorised and required to grant, that such vacancies have been supplied, and containing the names, residences, and descriptions of the new trustees, shall be conclusive evidence of the facts, and thereupon such new trustees shall have the same property, rights, and powers in and with respect to the adwoson as the trustees in whose place they were appointed; s. 12.

Trustees not to be accountable for involuntary losses; s. 13.

Vacancies in the incumbency before sale to be filled up; s. 14.

Owners may consent to the borrowing of money for purposes authorised by Acts commonly called Gilbert's Acts, 17 Geo. 3, c. 53; 21 Geo. 3, c. 66; 7 Geo. 4, c. 66; 1 & 2 Vict. c. 23; s. 15.

The certificate of two such justices as aforesaid, which they are hereby authorised and required to grant on being satisfied of the truth of the fact that such consent has been duly given, shall be conclusive evidence of the fact, and such certificate shall, for all purposes whatever, be deemed the consent of the patron within the meaning of those Acts; s. 16.

This Act shall extend only to England and Wales; s. 17.

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION OF BILL AFTER PAYMENT.

THIS was an appeal from the decision of Vice-Chancellor *Stuart* directing the delivery and taxation of three bills of costs. The Lord Justice *Turner*, in his judgment, said:—

"The language of the Statute is this:—'that the payment of any such bill as aforesaid shall in no case preclude the Court or Judge, to whom application shall be made, from referring such bill for taxation, if the special circumstances of the case shall, in the opinion of such Court or Judge, appear to require the same.' From this provision, that the payment of a bill shall not preclude taxation, if there are special circumstances rendering taxation proper, it is to be inferred that payment does preclude tax-

tion, unless there are such special circumstances. In every case, therefore, in which a bill has been paid, it is necessary to inquire whether there have been such special circumstances as are sufficient to require taxation.

"Now, the circumstances of the present case are somewhat peculiar. It appears that Mr. Turner had, some time previously to August, 1853, become the purchaser of an estate for 4,500*l.*, and not having money sufficient to complete the purchase, proposed to raise 4,000*l.* on mortgage, and Mr. Boyle was employed by him as his solicitor in the transaction of the business, both of the purchase and the mortgage. It appears that Boyle claimed against Turner an allowance of 250*l.* as a bonus for the negotiation of the purchase and of the loan; and if the taxation had depended on the propriety of demanding this bonus, there might have been a material question on the subject. In the observations which I shall make, I do not mean to intimate any approval of this claim, on which with justice to the parties I am not in a condition to give any opinion. That, however, is not the question to be considered; the question is as to the right to have these bills taxed. On the 12th of August, 1853, the transaction relating to the purchase and sale was completed, and the mortgage for 4,000*l.* was carried into effect; and on that occasion, after the completion of the purchase and the mortgage, Boyle delivered to Turner the bill of costs, amounting to 450*l.* 15*s.* 10*d.* On the same 12th of August, Turner was required to execute a mortgage to Boyle for 1,000*l.*, which sum was partly composed of 450*l.* 15*s.* 10*d.*, the amount of the bill, partly of the bonus of 250*l.*, and partly of a sum advanced by Boyle in the course of business, for the payment of the deposit on the purchase. These sums, however, did not together amount to 1,000*l.*, which was taken as a gross sum to be secured by the mortgage, and a balance was left in Boyle's hands, due to Turner, of 82*l.* 11*s.* 2*d.* On the 15th of October (the security for the 1,000*l.* having been given in August) the balance of 82*l.* 11*s.* 2*d.* was demanded by Turner, and paid to him by Boyle. The matter seems to have rested there till the 25th of February, 1854, at which period, other transactions having occurred, Boyle's mortgage was transferred, with Turner's concurrence, to another person. That completed the transaction as regards the bill for 450*l.* 15*s.* 10*d.*

"The other transactions to which I have just referred, were these:—It appears that Turner, who had made several other mortgages on different parts of his estates, was advised to pay off all the mortgages, including the 1,000*l.* due to Boyle, and Boyle acted for him in raising the requisite amount for that purpose, and in selling one of his estates. The transactions of raising this sum, which amounted to 4,600*l.*, and selling the farm, proceeded until the month of Feb. 1854, at which time there had arisen disputes as to Boyle's bill for 450*l.* 15*s.* 10*d.*, and the bonus. In February, 1854, Turner



discharged Boyle, and applied to a Mr. Dover to act as his solicitor, but it was arranged that Boyle should continue to act for Turner in raising the 4,600*l.* and the sale of the farm. This business was completed on the 25th of February, 1854, and in the meantime, on the 25th of January, Boyle had delivered his second bill of costs, which was for 190*l.* 12*s.* 9*d.*, but this was not paid till some time afterwards, namely, on the 8th of March, when it was paid out of the money that was raised by the mortgage and the sale of the farm. No further steps were taken until the 17th of May, 1854, when Turner presented his petition for an order to tax both these bills.

"Now, the question is, whether the facts which I have detailed were such special circumstances as to require the bills to be sent for taxation. I at present lay out of the case all question of overcharge. In the first place, the bill for 450*l.* 15*s.* 10*d.* seems to me to be beyond all question a paid bill. For what are the circumstances? There is a security for 1,000*l.*, in which is included 450*l.* 15*s.* 10*d.* for the amount of this bill, and that security is paid off on the 25th of February, 1854, when the mortgage was transferred. But, supposing it had not been paid off, can it be said that, where there has been a delivery of a bill and a security given for the amount, it is necessary for the solicitor to place in the hands of the client a sum of money to be handed back to the solicitor, in order to constitute payment within the meaning of the Act? I think not. In the present case, however, not only was there a settlement, but that settlement was ratified by the acceptance by Turner of the balance of 82*l.* 11*s.* 2*d.* And not only this, but on the 25th of February, 1854, the mortgage was dealt with as a valid subsisting mortgage, and transferred by Boyle, with Turner's privity and concurrence, to a stranger. Surely, when a man has not only given security for the payment of a bill of costs, but has ratified the transaction, and has allowed the security to be dealt with as a subsisting one, it would be going much too far to say that such a bill can be afterwards referred for taxation, unless on the ground of pressure or undue influence, entitling the client to say that he was not a free agent.

"What are the circumstances of the present case? In a letter from Boyle to Turner, of the 23rd of February, 1854, he writes thus:—'On the face of such a letter as that of yesterday's date, I can make no reduction in my two bills of costs, nor can I make you a loan of the amount of the latter. You will arrange accordingly. If you desire to tax the latter, I am afraid you are now rather late, as it will have to be paid on the completion of the mortgage business, and if you desire it to be postponed for the purpose of taxing, I will at once do so. In that event, let me have a telegraphic message to-morrow morning.' 'I wish to impress on you the necessity of impugning my mortgage deed and of taxing my last bill of costs now, if you ever intend doing so. You will have

no difficulty whatever in taxing now, but should you think proper to pay me, it will be very difficult for you to get the Court of Equity to re-open the transaction, as you act with your eyes wide open, and you have had abundance of time to investigate the items.'

"Mr. Boyle might have added, that the difficulty would be increased by the fact of the client having had the assistance of a different solicitor. Here, therefore, was a clear intimation to Mr. Turner that, if he paid the bill of costs, such payment would be set up against him, as being a payment not made under pressure, but after the offer of an opportunity for taxation. If a solicitor has made an offer to the client to have his bill taxed, and the client chooses to pay without taxation, it is too much to say that the account with the client is still to be kept open, and that at any time after payment the client may apply for taxation, without showing special circumstances.

"The same observations which apply to the bill for 450*l.* 15*s.* 10*d.* apply to the bill for 190*l.* 12*s.* 9*d.* for the letter to which I have referred extends to the 190*l.* 12*s.* 9*d.*, and there is also an absence of such special circumstances as are necessary to render the jurisdiction of the Court applicable after payment. In short, I think that parties ought not to be allowed, in cases of taxation, any more than in other transactions, to play fast and loose with their solicitors, and I consider the present attempt one of that character.

"The observations which I have made are subject to this qualification, that if there are overcharges of such a description as to be evidence of fraud, of course a payment affected by fraud cannot stand in equity, any more than any other fraudulent transaction; and therefore, if there are fraudulent overcharges, payment will not preclude taxation. But what are the overcharges complained of here? The first is a charge of 15*l.* for a negotiation which had not been carried out, and in respect of which it is alleged Boyle had agreed to make no charge. If that had been the entire case, there might have been held to be a fraud sufficient to open the account. But how do the facts stand? Why, it appears that Turner said to Boyle, 'I find that you have charged me with this sum of 15*l.* which you agreed not to charge,' and that Boyle then said that the business had been an onerous one, and that the client ought to allow it, and it appears that the client then made the allowance. They made, in fact, a new agreement at that time. It is also complained that there are 240 letters charged for in one year, but it is impossible, without knowing the circumstances of each case, to give an opinion on the fairness of this charge. The mere number is certainly not evidence that the circumstances did not justify it. I am of opinion that the alleged overcharges are not of that description which is necessary to open a bill which has been paid. For this purpose they must be extravagant, or amount to fraud. The case of the petitioner entirely fails on the special circumstances al-

leged, and I think that the petition for taxation ought to have been dismissed with costs." *In re Boyle, ex parte Turner*, 5 De G., M.N. & G. 540.

## LEGAL EDUCATION.

### PROPOSED REDUCTION OF STAMP DUTY AND INCREASED QUALIFICATIONS.

SIR,—In very many remarks of your correspondent "B." I agree, but on some others I think more consideration should be given before our approbation is granted.

There is general dissatisfaction at the present status and condition of the Profession. No one, I think, can deny this. It is a source of natural mortification to view the Bar engrossing all the patronage, whilst the Attorney has to plod on in the dull routine of his business unsought after and unhonoured, wearing out the precious faculties of his mind to find, perhaps, at last in the Autumn of his days, himself houseless and destitute. Whatever may be the amount of his legal talents, knowledge, or acuteness, they bring no pleasing reward to him in his position of Attorney or any elevation of rank. No Judgeships, Commissions, &c., are awarded to him. He is regarded amongst the lower classes, the prejudiced, and the ignorant, as the personification of knavery and trickery; and no amount of persuasion will convince such that "their lawyer" is not trying to "do" them, as the phrase is. Regard, again, the very unfortunate revelations of late years with respect to professional men who used to hold their heads high in their circle of acquaintance. The changes of the law of late years have been so many and so prejudicial to the pockets of professional men, that it is found to be a hard task in small practices for the industrious man to obtain a livelihood out of them, much less to obtain a profit. Your correspondent rather seems to complain of the "select" character of the Profession; but I think we should have to tremble for the Profession if it were made less so. If the "select" few cannot now obtain a large remuneration for their labour, what can we expect for the *oi tolldal* whom he is so desirous to introduce on the Roll of Practitioners? Should we not have to fear lest "poverty and not their will" would urge them to the commission of actions which under other circumstances they would blush at.

Desirable as it is to reward the praiseworthy and to give incentives to industry, I fear that the reduction of the stamp duty on articles would not give that result. I do not really believe, in most instances, the gift of articles would be advantageous to the recipients of them, and I am certain that it would not be for the Profession as a body. It should always be borne in mind that something more than mere knowledge of practice is required in the Attorney, if we desire to free him from the moral degradation that society erroneously, yet almost invariably, fixes on him. Why should an

Attorney be considered as easily reconciled to absence of truth and fixed with slight moral perceptions, but because formerly Attorneys got upon the Rolls "*sans everything*" that fitted them to maintain a respectable position in society. We owe a better class of Attorneys, and a more learned one to the anxiety of late years to foster and enlarge the examinations before admittance on the Rolls, and to the zeal with which the Incorporated Law Society has hunted out the disreputable members of the Profession. If you increase the circle of Attorneys you increase also the chances of the evil we wish to avoid. The fewer in numbers the better chance of their being honest men.

Not a word can be spoken, as a body, against Law Clerks, who are generally hard-working, religious, and respectable men; but they can scarcely be said to be fitted, except in rare and individual instances, to enter themselves on the Roll. When they prove themselves so, their employers rarely refuse to place them in the position to advance themselves. Some of the partners in the largest legal firms are at this day proofs of my assertion. Their elevation and success is alike honourable to themselves and to those who have helped them. But what is the fortune of one, perhaps, from want of ability, or the opportunity, may never be that of another. It is no use repining at the "exclusiveness" of the Profession, as all are not adapted to win success. The battle of life is to be fought on a rugged field, and who, with the brightest prospects before him, can venture positively to assure us what his end may be? And what can be said for those matured in the cradle of adversity?

With respect to the present examinations of articulated clerks, I conceive that any new regulations, will only apply to those who may enter into articles posterior to their promulgation. It would hardly be fair that those who have been studying under a certain system for two, three, or five years, should be suddenly and unexpectedly launched into a fresh sea of troubles with a prospect of shipwreck in view. Undoubtedly great improvement might take place in the mode of examination, and even in the questions propounded. Classical literature might not unreasonably form a portion of a student's requirements. It certainly would give him a "polish" for which he would be all the better. It is notorious that university men are better adapted to the requirements of society than those who have not had the advantages of academical education; and this is mainly owing to the softening influences of science on man's rustic character and habits. The attorney's clerk need not fear that he will be able to study Coke with less advantage and assiduity if he has spent over the writings of the immortal Tully some portion of his leisure time, or that the Statute of Uses will become less clear to his obtuse brain from his having dived into his Horace in a spare moment. Humanize the Profession, as far as a careful and diligent study of the Law in all its branches will allow. Honours, prizes, and orders of merit

are desirable, and no one earnest lawyer would wish, I am sure, that the careful student should not receive them; but, alas! it is always far easier to destroy than to create, and we run the risk not unfrequently in attempts at improvements of making the evil we seek to remedy ten times worse than before.

Bedford Row, May 11, 1856. L.

## PROPOSED SATURDAY HALF-HOLIDAY.

REFERRING to the Rule of all the Common Law Courts inserted in our last Number, directing that notices of legal proceedings should be served before two o'clock on Saturdays, and that services after that hour should be deemed to be served on the following Monday,—we have now to add that the Council of the Incorporated Law Society are applying to the Equity Judges to make a similar order in their Courts; and we trust that next Term there will be an entire uniformity in this regulation.

These Rules and Orders will enable the solicitors to relieve their clerks as well as themselves, except on urgent occasions. The practitioners in general have yet to determine whether they will altogether close their offices at two o'clock; and the public at large have yet to follow the example. On this subject we may again refer to the pamphlet of Mr. Lilwall, the Honorary Secretary of "The Early Closing Association," noticed at p. 14, *ante*.

The contents of the publication may be thus briefly described:—

Excessive labour hitherto on of the great evils of the country.

The folly as well as sin of an undue devotion to business.

The public, at length, somewhat awakened to a sense of the evil.

Employers also now generally admit its existence.

Practically—some improvement has taken place.

The great principle upon which the Early Closing Association was originally based:—"That it should not interfere with the interests of employers or the convenience of their customers."

The extent to which early closing may be carried in the retail trade.

Where half-holidays are practicable, and where not.

Progress of the half-holiday movement.

Progress of the practicability of half-holidays in the departments specified—progress of the movement.

How half-holidays may be granted in connexion with banking, and certain other establishments.

Lawyers' offices.

Deputation to Lord Campbell.

Benefits of a weekly half-holiday.

Persons *must* have recreation, the only questions are, of *what kind*? and *when*?

Protracted labour a prolific source of Sabbath desecration, &c.

A Christian duty to do all that is possible to abolish the system.

Saturday the best day for the half-holiday.

The bearing of the Saturday half-holiday upon the practice of Sunday trading.

Sunday trading, as at present carried on in the metropolis, not only sinful, but a grievous oppression upon tradesmen and their assistants.

Parliamentary evidence on Sunday trading.

Country postmen—a simple plan by which to lighten their Sunday labour.

Earlier payment of wages question.

Half-holiday better on a uniform day.

A general rule only, however, is here contended for.

The *principle* of half-holidays may be recognised even in the retail trade.

Likely to develop itself into practice, also, in some instances, in that branch of business.

A comparison of the relative advantages of occasional holidays, and weekly half-holidays.

Public holidays said by some persons to give an impetus to trade.

Desirableness of three or four such in the course of the year.

Special claims of the half-holiday movement at the present time.

The strong claims of the movement upon *all* parties—on those who supported, not less than on those who opposed Sir Joshua Walmsley's motion.

Uses to which the half-holiday has already been applied in London, Edinburgh, and Manchester.

The inutility of protracted labour.

Testimony bearing upon this point, of Dr. Southwood Smith, Mr. Robert Baker, Mr. Leonard Horner, Inspector of Factories, Messrs. Bianconi, Price's Candle Company, and certain other employers.

Public places of recreation.

Paucity of places of public recreation of an intellectual character.

The rules of our national institutions should be adopted to the circumstances of the people.

Certain changes in this particular suggested.

Objections thereto glanced at.

The Crystal Palace—proposal to reduce the charge of admission on Saturdays to 1s.—this question considered at some length.

Desirableness of establishing a cheap class of concerts.

Out-door recreations.

The importance of gymnastics, &c., as a means of healthful recreation.

Site of Smithfield: how to appropriate it.

Hyde Park and the condition of the river.

The Guildhall Meeting."

# CANDIDATES WHO PASSED THE EXAMINATION.

Easter Term, 1856.

## Names of Candidates.

## To whom Articled, Assigned, &c.

Arnold, Augustus Alfred	•	•	•	•	Hilder and Arnold
Aubin, William	•	•	•	•	Arthur Farre Dalrymple
Avckbourn, Hubert	•	•	•	•	Edward Hodgkinson
Barham, William James	•	•	•	•	Admitted in Queen's Bench, Mich. Term, 1820
Baxter, Stafford Charles	•	•	•	•	Robert Mich. Baxter; Stafford Baxter Somerville
Bedford, Francis Riland	•	•	•	•	Henry Lewin
Belfrage, John Henry	•	•	•	•	John Clayton; John Scott
Bromham, James Fraser	•	•	•	•	Alfred Rooker
Budd, Thomas Hayward	•	•	•	•	Thomas William Budd
Bugby, Henry	•	•	•	•	Walter Francis Baynes
Bull, William Rogers	•	•	•	•	William Bateman Bull
Callender, Richard Clement	•	•	•	•	Jacob Strickland
Cates, Robert, jun.	•	•	•	•	Robert Cates
Charlesworth, Charles Henry	•	•	•	•	Robert Tennant
Clarke, John Osmund	•	•	•	•	James Gudgeon
Cinlow, John	•	•	•	•	William Richard Drake
Cobby, Edward John	•	•	•	•	Charles Cobby
Cooper, John Newland	•	•	•	•	George Balchin; Charles Chalk; Arthur Chandler
Cowling, David John	•	•	•	•	Henry John Ware
Creswell, George	•	•	•	•	Samuel Wilkinson, jun.
Cutler, Egerton Cotton	•	•	•	•	Joseph Raw
Davis, Harry James	•	•	•	•	William Palmer.
Dickins, Frederick Charles	•	•	•	•	Joseph Addison M'Leod
Evans, Edward Eaton	•	•	•	•	James Eaton Evans
Every, William	•	•	•	•	Richard Every; Henry Mountrich James; Alfred Cox
Forward, Samuel	•	•	•	•	William Forward; George Cox Bompas
Fosbroke, Malbon	•	•	•	•	John Lawrence
Fox, Adam	•	•	•	•	John Whitworth
Gedge, Sydney, B.A.	•	•	•	•	Lawrence Desborough
Goody, Henry	•	•	•	•	Henry Sidney Goody
Gough, Charles Selwyn	•	•	•	•	Oswald Cheek; Richard Henry Rolls
Harcourt, Bateman	•	•	•	•	Walter Hughes
Hawkins, Robert Samuel	•	•	•	•	Thomas Morgan Gepp
Heywood, John Frederick	•	•	•	•	Samuel Gaskell; John Gaskell
Howard, William Tullet	•	•	•	•	Robert Brutton
Hoyle, Fretwell William	•	•	•	•	William Fretwell Hoyle; Wm. Grimwood Taylor
Hyett, John Charles	•	•	•	•	Alfred Henderson; Wm. Williams; John Browne Smith; Charles Edward Pownall
Jaquet, William	•	•	•	•	Philip Jaquet
Jeasop, Charles Hale	•	•	•	•	Walter Jeasop
Jones, George Newton Swinson	•	•	•	•	Julius Partridge; James Nash; Ebenezer Sargent
Keeley, George Taylor	•	•	•	•	William Turner Shaw; John Warwick Hickin
Lempriere, Harry Reid	•	•	•	•	John Innes Pocock; Robert Alexander Mitchell
M'Rae, John	•	•	•	•	William Snowball
Mathews, Charles Edward	•	•	•	•	Arthur Ryland; William Thomas Longbourne
Morris, Thomas	•	•	•	•	Thomas Woodhouse
North, Frederic	•	•	•	•	John North
Owen, David Henry	•	•	•	•	St. Barbe Sladen
Plews, John	•	•	•	•	John Fisher, jun.
Powell, James	•	•	•	•	Henry Powell
Pritchard, Edward Williams	•	•	•	•	Edward Pritchard
Radcliffe, Henry	•	•	•	•	Charles Henry Radcliffe; John Alex. Radcliffe
Randall, Alfred Brodribb	•	•	•	•	Thomas Goster
Rawlinson, Alfred	•	•	•	•	Henry Seymour Westmacott
Reeves, William Joseph	•	•	•	•	Edward Seymour Palmer; William Palmer
Roper, Samuel	•	•	•	•	Benjamin Hope; Thomas Hyatt
Roumieu, Edward Abraham	•	•	•	•	Robert Whitmore
Seddon, James	•	•	•	•	William Sale
Settle, Joseph	•	•	•	•	William Middleton
Sharp, Frederick William	•	•	•	•	John Anadell
Sills, John Saul	•	•	•	•	Randall Ellis Barroughes
Smith, Frederic	•	•	•	•	Samuel Smith
Solgrove, Kingsland	•	•	•	•	John Gidley
Spencer, Thomas Edward	•	•	•	•	William Spencer
Stephens, Arthur Thomas	•	•	•	•	William Stephens
Stewart, Raynham William	•	•	•	•	William Henry Orchard; Wm. Burbidge Lanfear
Swarbreck, Edward Dukinfield	•	•	•	•	Thomas Swarbreck

Henry Jordan	.	.	.	.	.	.
Henry	.	.	.	.	.	.
r, Frederic, B.A.	.	.	.	.	.	.
George Henry	.	.	.	.	.	.
Francis Robert	.	.	.	.	.	.
Henry De Grey	.	.	.	.	.	.
Robert	.	.	.	.	.	.
Eugene Thomas Curzon	.	.	.	.	.	.
Francis Stewart	.	.	.	.	.	.
Charles Alfred	.	.	.	.	.	.
Henry Brougham	.	.	.	.	.	.

Rowland Nevitt Bennet  
Frederic Vallentyne  
George Marten  
Messrs. Dvott  
Augustus Warren ; Bray  
Robert Curling ; Henry  
Jas. Boodle ; Thomas W  
George Bentinck Lefroy  
William Wilmot ; Gabri  
Francis Harding Gell  
George Capes ; Joseph

reference to the annexed maps will show that legal London is composed not only of the residences and chambers, but of Inns of Court and Law Courts—Civil as well as Criminal—‘Superior’ as well as Petty—and of the Courts, and Police Courts, and Prisons; and whilst the Criminal, the County, and the Courts, as well as the Prisons, are dotted all over the Metropolis, the Superior Law Courts are focussed at Westminster Hall; the Inns of Court being grouped in Chancery Lane, and the legal residences, or ‘chambers’ (for lawyers, like merchants now-a-days live mostly away from their business), concentrated into a dense neighbourhood about the same classic spot, but thinning off towards Guildhall and Westminister, as if they were the connecting links between the legal Courts and the legal Inns. The Inns of Court are themselves sufficiently peculiar to give a strong distinctive character to the locality in which they exist; for they are seen broad open squares like huge lawns, paved and treeless, and flanked

"But such are the features of the important Inns of Court, Gray's, and the Temple, these, there exists a labyrinth of alleys, or yards, which are called 'Chancery,' and among these, the lugubrious locality of Barnard's ditto, and Court of the Sergeants', and some of these, one of the lamp-post is the only one of the back-yard-like character seen struggling up between the pavement, as if each pavement were a giant, and the lamp-post a dwarf."

~~Stock Companies' Winding-up Act~~  
~~—Lord Brougham. Passed.~~  
~~Law Amendment:—Earl of St.~~  
~~Speakers.~~  
~~Officers:—Bishop of Exeter. For~~  
~~Act Amendment.—For 2nd read-~~  
~~May 19.~~  
~~and Matrimonial Causes.—Lord~~  
~~For 2nd reading, May 20.~~  
~~Law Amendment.—Lord Chan-~~  
~~In Select Committee.~~  
~~Law Amendment (Scotland).—~~  
~~Committee.~~  
~~Courts Act Amendment.—Lord~~  
~~In Committee, May 23.~~  
~~the Tax. For 2nd reading, May 20.~~  
~~Session.—Lord Brougham. For~~

### Book of Comments.

and Sales of Settled Estates. For  
 May 19.  
 of Partnership (No. 2).—Mr. Lowe.  
 reading, Mr.  
 Stock Companies.—Mr. Lowe. Re-  
 with amendments, May 19.  
 T. & Co., Abolition.—Mr. Lowe.  
 Committee.  
 and General Location, &c.—Mr. Cranford.  
 May 22.  
 of Procedure and Evidence.—  
 Kely. For 2nd reading, May 19.  
 of Probate of Wills and Grants of  
 Solicitor-General. For 2nd  
 May 18.  
 and Matrimonial Jurisdiction.  
 Kely. For 2nd reading, May 19.  
 Courts.—Mr. Collier. For 2nd  
 June 11.  
 Senate Report.—Mr. Locke King.  
 May 20.  
 of Abolition.—Mr. Milner Gibson.  
 May 19.  
 Bureau.—Mr. Bourgeois. For 2nd  
 May 18.  
 Abolition.—Sir W. Clay. In  
 May 18.

Church Rates.—Marquis of Blandford. For 2nd reading, May 21.

Amended Formation of Parishes.—Marquis of Blandford. Re-committed.

Adwosons.—Mr. Child. For 2nd reading, May 21.

Reversionary Interests of Married Women.—Mr. Malins. *Passed.*

Specialty and Simple Contract Debts.—Mr. Malins. For 2nd reading, May 22.

Take Commutation Rent Charge.—Mr. R. Phillimore. In Select Committee.

Fire Insurances. For 2nd reading. Medical Profession.—Mr. Headlam. In Select Committee.

Medical Qualification and Registration.—Lord Elcho. For 2nd reading.

Trust Property Criminal Appropriation.—Attorney-General.

County and Borough Police.—Sir G. Grey. Re-committed with Amendments, May 23.

Public Prosecutors.—Mr. J. G. Phillimore. In Select Committee.

Aggravated Assaults.—Mr. Dillwyn *Not moved.*

Summary Jurisdiction of Justices of Peace.—Mr. Locke King. For 2nd reading, May 21.

Qualification of Justices of the Peace.—Mr. Colville. Re-committed, May 21.

London Corporation.—Sir G. Grey. For 2nd reading, May 26.

Courts of Common Law (Ireland). Re-Committed, May 23.

\* Both Houses will re-assemble on the 19th.

## NOTES OF THE WEEK.

THE OFFICE OF READER ON THE LAW OF REAL PROPERTY AT GRAY'S INN.

Mr. Reginald Robert Walpole, the Reader on the Law of Real Property, having signified his intention of resigning his office at the expiration of the present Educational Term in July next, the Masters of the Bench have issued a notice requesting gentlemen desirous of becoming candidates for the office, and who must be Barristers, to communicate their desire to the Treasurer of the Society, at the Steward's Office, South Square, on or before the 2nd June next.

Any information required upon the subject may be obtained at the Steward's office.

### CHANCERY HOLIDAY.

The Lord Chancellor has ordered that the several offices of the Court shall be closed on Thursday, the 29th instant, on account of the celebration of her Majesty's birth-day. It is understood also, that the 29th will be a day of general rejoicing on the prosperous termination of the war.

### ROLLS VACATION NOTICE.

The Chambers of the Master of the Rolls will be open on Tuesdays, Wednesdays, Thursdays, and Fridays in every week during the vacation, from 11 to 1 o'clock.

## LAW APPOINTMENTS.

The Queen has been pleased to appoint the Right Honourable Matthew Talbot Baines, to be the Fourth Charity Commissioner for England and Wales, in the room of the Right Hon. Lord John Russell, resigned.—From the *London Gazette* of May 13.

Mr. Isaac Davies Rees, Solicitor, of Swansea, has been appointed Clerk to the County Court of Aberdare.

Mr. Edward Colnett Spickett, Solicitor, of Pontypridd, has been appointed Clerk to the County Court at Newbridge.

The Right Hon. Sir Lawrence Peel, has been called to the Bench of the Hon. Society of the Middle Temple.

### COMMON LAW SITTINGS AT NISI PRIUS.

#### Queen's Bench.

In and after Trinity Term, 1856.

In Term.—IN MIDDLESEX.

1st Sitting, Friday . . . . . May 23

2nd Sitting, Friday . . . . . May 30

3rd Sitting, Thursday . . . . . June 5

For Undefended Causes only.

IN LONDON.

1st Sitting, Tuesday . . . . . May 27

2nd Sitting, Tuesday . . . . . June 3

After Term.

IN MIDDLESEX.

IN LONDON.

Friday . . . June 13 | Friday . . . June 27

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

#### Common Pleas.

In Term.

MIDDLESEX.

LONDON.

Monday . . May 26 | Friday . . May 30

Tuesday . . June 3 | Friday . . June 6

After Term.

MIDDLESEX.

LONDON.

Friday . . . June 13 | Tuesday . . June 24

The Court will sit during and after Term at 10 o'clock.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

#### Exchequer of Pleas.

In Term.—IN MIDDLESEX.

1st Sitting, Friday . . . . . May 23

2nd Sitting, Wednesday . . . . . May 28

3rd Sitting, Wednesday . . . . . June 4

IN LONDON.

1st Sitting, Tuesday . . . . . May 27

2nd Sitting, Tuesday . . . . . June 3

After Term.—IN MIDDLESEX.

Friday . . . . . June 13

IN LONDON.

Friday . . . . . June 27

The Court will sit during and after Term at Ten o'clock.

The Court will sit in Middlesex, at Nisi Prius, in Term, by adjournment from day to day, until the causes entered for the respective Middlesex Sittings are disposed of.

The London Sittings in Term will be for undefended Causes only.

Thornhill, Henry Jordan	.	.	.	.	.
Vallings, Henry	.	.	.	.	.
Vavasaur, Frederic, B.A.	.	.	.	.	.
Walton, George Henry	.	.	.	.	.
Warren, Francis Robert	.	.	.	.	.
Warter, Henry De Grey	.	.	.	.	.
Wheeler, Robert	.	.	.	.	.
Whitell, Eugene Thomas Curzon	.	.	.	.	.
Wilmot, Francis Stewart	.	.	.	.	.
Woolley, Charles Alfred	.	.	.	.	.
Wright, Henry Brougham	.	.	.	.	.

MR. HENRY MAYHEW, in his new work called "The Great World of London" (part 2), has given a graphic account of the Lawyers in London,—of the various classes which compose the general body, and the localities in which they congregate. He has also illustrated his work by two maps,—the 1st comprising "the Inns of Court and districts inhabited by Lawyers;" and the 2nd the Superior Courts of Law, the County Courts, Sessions Houses, Police Courts, and Prisons throughout the Metropolis.

These maps strikingly show, as we have before submitted to our readers, that this celebrated "Law District" is in the very centre of our vast metropolis, and consequently that here the New Law Courts and Offices should be erected, as well for the convenience of the Public as the Profession, and for facilitating and expediting legal business and saving expense.

The following are some of Mr. Mayhew's descriptions of the "local habitations" of the Profession and the peculiarities by which they are surrounded:—

"A reference to the annexed maps will show that Legal London is composed not only of lawyers' residences and chambers, but of Inns of Court and Law Courts—Civil as well as Criminal, 'Superior' as well as Petty—and County Courts, and Police Courts, and Prisons; and that whilst the Criminal, the County, and Police Courts, as well as the Prisons, are dotted, at intervals, all over the Metropolis, the Superior Law Courts are focussed at Westminster and Guildhall; the Inns of Court being grouped round Chancery Lane, and the legal residences, or rather 'chambers' (for lawyers, like merchants, now-a-days live mostly away from their place of business), concentrated into a dense mass about the same classic spot, but thinning gradually off towards Guildhall and Westminster, as if they were the connecting links between the legal Courts and the legal Inns.

"The Inns of Court are themselves sufficiently peculiar to give a strong distinctive mark to the locality in which they exist; for here are seen broad open squares like huge court-yards, paved and treeless, and flanked

Under the new Rules of Hilary Term, 1853, it is provided that every person who shall have given Notices of Examination and Admission, and "who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may *within ONE WEEK after the end of the Term* for which such Notices were given, *renew* the Notices for Examination or Admission *for the then next ensuing Term*, and so from time to time as he shall think proper;" but shall not be admitted until the last day of the Term, unless otherwise ordered. This Rule has been made in order to avoid the practice of giving double Notices.

**House of Lords.**

**Joint-Stock Companies' Winding-up Act Amendment.—Lord Brougham. Passed.**

Marriage Law Amendment. — Earl of St. Germans. *Negatived.*

**Clergy Offences.**—Bishop of Exeter. For 2nd reading.

Drainage Act Amendment.—For 2nd reading, May 19.

Divorce and Matrimonial Causes.—Lord Chancellor. For 2nd reading May 20

**Mercantile Law Amendment.**—Lord Chancellor. In Select Committee

**Mercantile Law Amendment (Scotland).—**  
In Select Committee.

County Courts Act Amendment. — Lord Chancellor. In Committee May 23

**Judicial Statistics.**—Lord Brougham. For

**Judicial Statistics.**—Lord Brougham. For  
2nd reading.

**House of Commons.**

**Leases and Sales of Settled Estates.** For  
2nd reading, May 19.

Law of Partnership (No. 2).—Mr. Lowe.  
For 2nd reading, May.

**Joint-Stock Companies.**—**Mr. Lowe.** Re-committed, with amendments, May 19.

Shipping Tolls, &c., Abolition.—Mr. Lowe.  
In Select Committee.

**Judgments, Execution, &c.—Mr. Craufurd.**  
For 2nd reading, May 22.

Amendment of Procedure and Evidence.—  
Sir F. Kelly. For 2nd reading, May 19.

**Court of Probate of Wills and Grants of Administration.—Solicitor-General. For 2nd**

**Testamentary and Matrimonial Jurisdiction.**

**Ecclesiastical Courts.**—**Mr. Collier.** For 2nd

**Sleeping Statutes' Repeal.**—Mr. Locke King.

Oath of Abjuration.—Mr. Milner Gibson.

**Poor Removal.**—Mr. Bouverie. For 2nd

**Church Rates Abolition.**—Sir W. Clay. In

**Church Rates Abolition.**—**SIR W. CLAY.** 11.  
**Committee, May 19.**

**Church Rates.**—Marquis of Blandford. For 2nd reading, May 21.

**Amended Formation of Parishes.**—Marquis of Blandford. Re-committed.

**Adwosons.**—Mr. Child. For 2nd reading, May 21.

**Reversionary Interests of Married Women.**—Mr. Malins. *Passed.*

**Specialty and Simple Contract Debts.**—Mr. Malins. For 2nd reading, May 22.

**Tithe Commutation Rent Charge.**—Mr. R. Phillimore. In Select Committee.

**Fire Insurances.** For 2nd reading.

**Medical Profession.**—Mr. Headlam. In Select Committee.

**Medical Qualification and Registration.**—Lord Elcho. For 2nd reading.

**Trust Property Criminal Appropriation.**—Attorney-General.

**County and Borough Police.**—Sir G. Grey. Re-committed with Amendments, May 23.

**Public Prosecutors.**—Mr. J. G. Phillimore. In Select Committee.

**Aggravated Assaults.**—Mr. Dillwyn *Notified.*

**Summary Jurisdiction of Justices of Peace.**—Mr. Locke King. For 2nd reading, May 21.

**Qualification of Justices of the Peace.**—Mr. Colville. Re-committed, May 21.

**London Corporation.**—Sir G. Grey. For 2nd reading, May 26.

**Courts of Common Law (Ireland).** Re-Committed, May 23.

\*.\* Both Houses will re-assemble on the 19th.

## NOTES OF THE WEEK.

### THE OFFICE OF READER ON THE LAW OF REAL PROPERTY AT GRAY'S INN.

Mr. *Reginald Robert Walpole*, the Reader on the Law of Real Property, having signified his intention of resigning his office at the expiration of the present Educational Term in July next, the Masters of the Bench have issued a notice requesting gentlemen desirous of becoming candidates for the office, and who must be Barristers, to communicate their desire to the Treasurer of the Society, at the Steward's Office, South Square, on or before the 2nd June next.

Any information required upon the subject may be obtained at the Steward's office.

### CHANCERY HOLIDAY.

The Lord Chancellor has ordered that the several offices of the Court shall be closed on Thursday, the 29th instant, on account of the celebration of her Majesty's birth-day. It is understood also, that the 29th will be a day of general rejoicing on the prosperous termination of the war.

### ROLLS VACATION NOTICE.

The Chambers of the Master of the Rolls will be open on Tuesdays, Wednesdays, Thursdays, and Fridays in every week during the Vacation, from 11 to 1 o'clock.

## LAW APPOINTMENTS.

The Queen has been pleased to appoint the Right Honourable *Matthew Talbot Baines*, to be the Fourth Charity Commissioner for England and Wales, in the room of the Right Hon. Lord John Russell, resigned.—From the *London Gazette* of May 13.

Mr. *Isaac Davies Rees*, Solicitor, of Swansea, has been appointed Clerk to the County Court of Aberdare.

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## COMMON LAW SITTINGS AT NISI PRIUS.

### Queen's Bench.

In and after Trinity Term, 1856.

In Term.—IN MIDDLESEX.

1st Sitting, Friday . . . . .	May 23
2nd Sitting, Friday . . . . .	May 30
3rd Sitting, Thursday . . . . .	June 5

For Undeferred Causes only.

IN LONDON.

1st Sitting, Tuesday . . . . .	May 27
2nd Sitting, Tuesday . . . . .	June 3

After Term.

IN MIDDLESEX.

IN LONDON.

Friday . . . . . June 13	Friday . . . . . June 27
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The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

## Common Pleas.

In Term.

MIDDLESEX.

LONDON.

Monday . . . . . May 26	Friday . . . . . May 30
Tuesday . . . . . June 3	Friday . . . . . June 6

After Term.

MIDDLESEX.

LONDON.

Friday . . . . . June 13	Tuesday . . . . . June 24
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The Court will sit during and after Term at 10 o'clock.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

## Exchequer of Pleas.

In Term.—IN MIDDLESEX.

1st Sitting, Friday . . . . .	May 23
2nd Sitting, Wednesday . . . . .	May 28
3rd Sitting, Wednesday . . . . .	June 4

IN LONDON.

1st Sitting, Tuesday . . . . .	May 27
2nd Sitting, Tuesday . . . . .	June 3

After Term.—IN MIDDLESEX.

Friday . . . . .	June 13
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IN LONDON.

Friday . . . . .	June 27
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The London Sitings in Term will be for undeferred Causes only.



<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Thornhill, Henry Jordan . . . . .	Rowland Nevitt Bennett
Vallings, Henry . . . . .	Frederic Vallings
Vavasour, Frederic, B.A. . . . .	George Marten
Walton, George Henry . . . . .	Messrs. Drott
Warren, Francis Robert . . . . .	Augustus Warren; Bray and Warren
Warter, Henry De Grey . . . . .	Robert Curling; Henry Diggory Warter
Wheeler, Robert . . . . .	Jas. Boodle; Thomas Whitty Chandler; G. Ridge
Whittell, Eugene Thomas Curzon . . . . .	George Bentinck Lefroy
Wilmot, Francis Stewart . . . . .	William Wilmot; Gabriel Goldney
Woolley, Charles Alfred . . . . .	Francis Harding Gell
Wright, Henry Brougham . . . . .	George Capes; Joseph John Wright

## LEGAL LONDON.

MR. HENRY MAYHEW, in his new work called "The Great World of London" (part 2), has given a graphic account of the Lawyers in London,—of the various classes which compose the general body, and the localities in which they congregate. He has also illustrated his work by two maps,—the 1st comprising "the Inns of Court and districts inhabited by Lawyers;" and the 2nd the Superior Courts of Law, the County Courts, Sessions Houses, Police Courts, and Prisons throughout the Metropolis.

These maps strikingly show, as we have before submitted to our readers, that this celebrated "Law District" is in the very centre of our vast metropolis, and consequently that here the New Law Courts and Offices should be erected, as well for the convenience of the Public as the Profession, and for facilitating and expediting legal business and saving expense.

The following are some of Mr. Mayhew's descriptions of the "local habitations" of the Profession and the peculiarities by which they are surrounded:—

"A reference to the annexed maps will show that Legal London is composed not only of lawyers' residences and chambers, but of Inns of Court and Law Courts—Civil as well as Criminal, 'Superior' as well as Petty—and County Courts, and Police Courts, and Prisons; and that whilst the Criminal, the County, and Police Courts, as well as the Prisons, are dotted, at intervals, all over the Metropolis, the Superior Law Courts are focussed at Westminster and Guildhall; the Inns of Court being grouped round Chancery Lane, and the legal residences, or rather 'chambers' (for lawyers, like merchants, now-a-days live mostly away from their place of business), concentrated into a dense mass about the same classic spot, but thinning gradually off towards Guildhall and Westminster, as if they were the connecting links between the legal Courts and the legal Inns.

"The Inns of Court are themselves sufficiently peculiar to give a strong distinctive mark to the locality in which they exist; for here are seen broad open squares like huge court-yards, paved and treeless, and flanked

with grubby mansions—as big and cheerless-looking as barracks—every one of them being destitute of doors, and having a string of names painted in stripes upon the door posts, that reminds one of the lists displayed at an estate-agents' office, and there is generally a chapel-like edifice called the 'hall,' that is devoted to feeding rather than praying, and where the lawyerlings 'qualify' for the Bar by eating so many dinners; and become at length—gastro-nomically—"learned in the law." Then how peculiar are the tidy legal gardens attached to the principal Inns, with their close-shaven grass-plots looking as sleek and bright as so much green plush, and the clean-swept gravel walks thronged with children, and nursemaids, and law-students. How odd, too, are the desolate-looking legal alleys or courts adjoining these Inns, with nothing but a pump or a cane-bearing street-keeper to be seen in the midst of them, and occasionally at one corner, beside a crypt-like passage, a stray dark and dingy barber's shop, with its seedy display of powdered horsehair wigs of the same dirty-white hue as London snow. Who, moreover, has not noted the windows of the legal fruiterers and law stationers hereabouts, stuck over with small announcements of clerkships wanted, each penned in the well-known formidable straight-up-and-down three-and-fourpenny hand, and beginning—with a "This adventure"—like flourish of German text—"The Writer herrof." &c. Who, too, while threading his way through the monastic-like byways of such places, has not been startled to find himself suddenly light upon a small enclosure, comprising a tree or two, and a little circular pool, hardly bigger than a lawyer's inkstand, with a so-called fountain in the centre, squirting up the water in one long thick thread, as if it were the nozzle of a fire-engine.

"But such are the features only of the more important Inns of Court, as Lincoln's and Gray's, and the Temple; but, in addition to these, there exists a large series of legal blind alleys, or yards, which are entitled "Inns of Chancery," and among which may be classed the lugubrious localities of Lyon's Inn and Barnard's ditto, and Clement's and Clifford's, and Sergeants', and Staple, and the like. In some of these, one solitary, lanky-looking lamp-post is the only ornament in the centre of the backyard-like square, and the grass is seen struggling up between the interstices of the pavement, as if each paving-stone were trimmed

with green chenille. In another you find the statue of a kneeling negro, holding a platter-like sun-dial over his head, and seeming, while doomed to tell the time, to be continually inquiring of the surrounding gentlemen in black, whether he is not 'a man and a brother?' In another you observe crowds of lawyers' clerks, with their hands full of red-tape-tied papers, assembled outside the doors of new clubhouse-like buildings. Moreover, to nearly every one of these legal nooks and corners the entrance is through some archway or iron gate that has a high bar standing in the middle, so as to obstruct the passage of any porter's load into the chancery sanctuary; and there is generally a little porter's lodge, not unlike a French *conciergerie*, adjoining the gate, about which loiter liveried street-keepers to awe off little boys, who would otherwise be sure to dedicate the tranquil spots to the more innocent pursuit of marbles or leap-frog.

"The various classes of Law Courts too have, one and all, some picturesque characteristics about them. For example, is not the atmosphere of Westminster Hall essentially distinct from that of the Old Bailey? During term time the Hall at Westminster (which is not unlike an empty railway terminus, with the exception that the rib-like rafters are of carved oak rather than iron) is thronged with suitors and witnesses waiting for their cases to be heard, and peering the Hall pavement the while, in rows of three or four, and with barristers here and there walking up and down in close communion with attorneys; and there are sprucely-dressed strangers from the country, either bobbing in and out of the various Courts, or else standing still, with their necks bent back and their mouths open, as they stare at the wooden angels at the corners of the oaken timbers overhead.

"The Courts here are, as it were, a series of ante-chambers ranged along one side of the spacious Hall; and as you enter some of them, you have to bob your head beneath a heavy red cloth curtain. The Judge or Judges, are seated on a long, soft-looking, crimson-covered bench, and costumed in wigs that fall on either side their face, like enormous spaniel's ears, and with periwigged barristers piled up in rows before them, as if they were so many mediæval medical students attending the lectures at some antiquated hospital. Then there is the legal fruit-stall, in one of the neighbouring passages, for the distribution of 'apples, oranges, biscuits, ginger-beer'—and sandwiches—to the famished attendants at Court; and the quiet, old-fashioned hotels, for the accommodation of witnesses from the country, ranged along the opposite side of Palace Yard."

After noticing the Central Criminal Court and its purlieus, the Insolvent Debtors' Court, and the Police Courts, Mr. Mayhew thus proceeds:—

"Of this Legal London, Chancery Lane may be considered the capital; and here, as we have before said, everything smacks of the law.

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## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*In re Saitors' Fund, In re Earl of Devon.*

May 7, 1856.

## STOP ORDER ON COMPENSATION PENSION TO PATENTEE OF SUBPENA OFFICE.

*It appeared that an order had been made for the payment of the compensation pension granted on the abolition of the office to the patentee of the subpoena office to a trustee under a creditors' deed: On the petition of a judgment creditor a further order was made against paying any portion of the annuity to such patentee without the further order of the Court, but without prejudice to the former order.*

THIS was a petition on behalf of a judgment creditor of the Earl of Devon, to whom a pension of 916*l.* a year had been granted by way of compensation upon the abolition of his office as patentee of the subpoena office, for a stop order thereon against any portion being paid to him. It appeared that in Nov. 1853, an order had been made for the payment of the whole pension to a trustee under a creditors' deed. *¶*

*Nichols* in support; *Southgate*, contra; *Taylor* for the solicitor to the suitors' fund.

The Lord Chancellor said, an order might be taken that no part of the annuity should be paid to Lord Devon without the further order of the Court, without prejudice to the order of November, 1853.

## Master of the Rolls.

*Borkas v. Lloyd.* May 8, 1856.

## WITNESS.—ATTACHMENT FOR DISOBEDIENCE TO SUBPENA.—PAYMENT OF EXPENSES.

*Held, discharging with costs an attachment against a witness residing at Hereford for disobedience to a subpoena ad test. before the examiner, that he was entitled to be paid 6*l.* with the subpoena, together with an undertaking by the solicitor for the payment of any further sum to which on taxation he should be held entitled. It appeared that the sum tendered was less than the travelling expenses.*

THIS was an application to discharge an attachment which had issued against a witness residing at Hereford for disobedience to a subpoena ad test. before the examiner. It appeared that a sum of 3*l.* 7*s.* had been tendered upon the service, but that the applicant required 6*l.* to be paid immediately, together with an undertaking from the solicitor for any further sum which the Taxing Master might allow. The travelling expenses alone exceeded the amount tendered.

The Master of the Rolls (after having consulted the Taxing Master) said, that the sum required of 6*l.* was not unreasonable, and that the applicant was entitled to the undertaking for any further sum to which he might be held

entitled. The attachment would therefore be discharged, with costs.

## Vice-Chancellor Kindersley.

*In re Marylebone Joint-Stock Bank.* May 8, 1856.

## GENERAL BANKING ACT.—WINDING-UP JOINT-STOCK BANK.—AMOUNT OF CALLS.

*By one of the clauses of the deed of settlement of a joint-stock banking company, established under the General Banking Act, 7 Geo. 4, c. 46, it was provided that every shareholder should be liable for losses in proportion to his shares: Held, reversing the decision of Master Sir G. Rose, that the amount of calls, upon the company being wound-up, was not limited to the value of the shares.*

THIS was a motion to reverse the decision of Master Sir George Rose, declining to make a call of 11*l.* on the shareholders of the above bank, which was established under the General Banking Act, 7 Geo. 4, c. 46. It appeared that, before the winding-up order in 1848, 11*l.* per share (which was of the amount of 25*l.* each) had been paid, and that a call of 4*l.* per share had been since made. The official manager now proposed to make two further calls of 10*l.* and 11*l.* per share, but the Master had only made the former, on the ground that the liability of the shareholders was limited to the amount of their shares. By clause 12, however, of the deed of settlement, it was provided that every shareholder should be interested in the profits and liable for the losses in proportion to his shares.

*Smythe, Hetherington, and Cole* in support of the motion; *Baily, Glasse, Southgate, and Sir W. B. Riddell*, contra; *Roxburgh* for the official manager.

The Vice-Chancellor said, that the Master was wrong on the ground on which he declined to make a call, as the deed contained an express stipulation that each shareholder should be liable in proportion to his shares. The very purpose of the Winding-up Acts was to work out the equities, and the Master was still at liberty to do so, but he must re-consider his decision on the ground he had taken.

## Court of Queen's Bench.

*Wickenden v. Webster.* May 7, 1856.

## EJECTMENT.—BREACH OF COVENANT.—PRIVATE DWELLING-HOUSE.

*A covenant in an underlease that the defendant should not carry on any public business and use the premises solely as a private dwelling-house, was held (discharging a rule nisi to set aside the verdict for the plaintiff and for a new trial in an action of ejectment) to be breached by his having let the premises to a person who carried on a small day-school for young ladies, and*

*taught dancing, of which public bills were exhibited.*

THIS was a rule nisi to set aside the verdict for the plaintiff and for a new trial of this action of ejectment to recover possession of a house in Valentine Terrace, Blackheath, let to the defendant on an underlease, on the ground of the breach of a covenant not to carry on any public business, and to use the premises solely as a private dwelling-house. It appeared that the defendant had let the premises to a Miss Edler, who carried on a small day-school for young ladies, and that dancing was taught and bills to that effect posted up in the windows in the neighbourhood, and also at the Deptford Institution.

M. Chambers, Q. C., and T. Chitty showed cause; Bovill, Q. C., and Jacobs in support.

The Court said, that the business carried on of a dancing academy was in a public way and on an extensive scale, and the rule must be discharged.

*Regina v. Hunt.* May 8, 1856.

CERTIORARI.—DISALLOWANCE OF ATTORNEY'S BILL OF COSTS BY POOR LAW AUDITOR. — TAXATION BY CLERK OF THE PEACE.

*Where the bill of costs of an attorney employed by parish officers in regard to the removal of a pauper was not taxed by the clerk of the peace, under the 7 & 8 Vict. c. 101, s. 39, held, that the decision of the poor law auditor, disallowing such bill, was final, and a rule nisi for a certiorari to bring up his decision, was discharged, but without costs.*

THIS was a rule nisi for a certiorari to bring up the disallowance by the poor law auditor of a sum of 26*l.* odd, which had been paid by the parish officers of Napton, to their attorney for services rendered in connexion with the removal of a pauper. It appeared that the bill of costs had not been taxed by the clerk of the peace.

By the 7 & 8 Vict. c. 101, s. 39, it is enacted, that "on the application of any overseer, or of any board of guardians, or of any attorney at law, it shall be the duty of the clerk of the peace of the county or place, or his deputy, if thereunto required, to tax any bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union situate wholly or in part within such county or place; and the allowance of any sum on such taxation shall be *prima facie* evidence of the reasonableness of the amount, but not of the legality of the charge;" "and if any such bill be not taxed before it is presented to the auditor, the auditor's decision on the reasonableness as well as the legality of the charges shall be final." And by s. 35, "if any person aggrieved by any allowance, disallowance, or surcharge by any such auditor require such auditor to state the reason for the said allowance, &c., the auditor shall state such reason in writing in the book of account in which the allowance, &c., may be made; and it shall be lawful for every person

aggrieved" "by such disallowance or surcharge, &c., to apply to the Court of Queen's Bench for a writ of certiorari to remove into the said Court the said allowance, &c."

Hayes, S. L., and Hall showed cause against rule, which was supported by Pashley, Q. C., and Bittleston.

The Court said, that the certiorari would not lie, as the attorney's bill had not been taxed, and the decision of the poor law auditor was final, under sec. 39. The rule would be discharged, but without costs.

*Catlin v. Westrop.* May 8, 1856.

ATTORNEYS.—UNDEXTAKING TO PAY ON CLIENT'S DEFAULT.—ACTION FOR AMOUNT.

*B., an attorney, gave an undertaking for his client, the defendant in an action, on behalf of himself and partner for the payment of the sum for which the action was brought, upon the plaintiff giving certain time and the defendant making default. Upon such default being made a rule was made absolute on B. for payment of the amount, but discharged as against his partner without costs, on the ground that it was not authorised.*

*A writ was issued for the amount, but was not served by reason of B. keeping out of the way: Held, no answer to the rule.*

THIS was a rule nisi on Messrs. Shearman & Slater, the attorneys for the defendant in this action, to pay to the plaintiff a sum of 49*l.*, the amount of the bill of exchange for which the action was brought. It appeared that the plea pleaded had been withdrawn by consent upon payment of costs and an undertaking from the defendant's attorneys that if the plaintiff would give him until March 7, and default were then made, they would pay the amount. Default was made, whereupon this rule had been obtained. It appeared that a writ of summons had been issued against the attorneys, but had not been served as neither of the parties could be met with at their office.

Barnard, for Mr. Shearman, showed cause on the ground he knew nothing of the action and that the undertaking on his behalf was not authorised; Creasy for Mr. Slater.

Prentice in support.

The Court said, that if Mr. Slater had appeared to the action, it would have been an answer to the present application, but that as he had evaded service of the writ, the case was the same as if no action had been commenced. The rule would therefore be absolute as against Slater, and discharged as against Shearman, but without costs.

*Queen's Bench Practice Court.*

(Coram Coleridge, J.)

*Ex parte Robert Rising, gent., one, &c.* May 8, 1856.

ATTORNEY. — RE-ADMISSION. — EXAMINATION.

*Where an attorney had ceased to practise in 1846, and been struck off the roll at his*

*own request in 1849, and had not since been engaged in legal pursuits: Held, that he must be examined before he is re-admitted.*

THIS was an application on behalf of Mr. Robert Rising, to be re-admitted on the roll of attorneys of this Court. It appeared that he was admitted in Trinity Term, 1834, and took out his certificate until 1846, and that his name had been struck off the roll at his own request in the year 1849, upon his intending to be called to the Bar, and that he had since been residing on his own property at West Somerton, and had not been engaged in legal pursuits.

*Lewis* in support.

The Court said, that the application could not be granted without an examination.

#### Court of Common Pleas.

*Cloemandue v. Carroll.* April 24; May 7, 1856.

CHARTER-PARTY.—EVIDENCE.—COPY.—STAMP.—ONUS PROBANDI.

*In an action on a charter-party it appeared that the original could not be found and a copy was tendered. Evidence was adduced that the original had been sent by post from the country to the proper office in London to be stamped with the amount of duty and postage: Held, making absolute a rule for a new trial, that it was admissible in evidence, and that the onus lay on the defendant to show the original was not properly stamped.*

THIS was a rule nisi to set aside the verdict for the defendant and for a new trial in this action on a charter-party. It appeared on the trial before *Jervis, L. C. J.*, that the original charter-party could not be found and a copy was accordingly put in, but it was rejected on the ground that the original was not shown to have been stamped. Evidence was however adduced to the effect that the original had, when signed, been sent by post from Cardiff to the proper office in London to be stamped, with the amount of duty and postage.

*Mellish* showed cause against the rule, which was supported by *Channell, S. L.*, and *Henderson*.

*Cur. ad. vult.*

The Court said that the *onus probandi* of the charter-party being unstamped lay on the defendant, and that in the absence of any such proof it must be presumed to be stamped. Secondary evidence of it was therefore admissible, and the rule for a new trial would be made absolute.

#### Court of Eschequer.

*Poole v. Gould.* May 8, 1856.

WITNESS.—SERVICE OF SUBPENA AD TEST. IN COURT.

*Held, that a subpoena ad test. may be served on a witness attending Court on the trial of an action.*

THIS was a rule nisi to set aside the service of a writ of summons, on the ground that it

took place when the defendant was attending the Court of Queen's Bench as a witness on the trial of an action.

*Petersdorff* showed cause against the rule, which was supported by *Daly*, citing *Cole v. Hawkins*, 2 Stra. 1044; *S. C. Andrews*, 275.

The Court said, that there could be no objection to the service, and that although the service might be objectionable, yet having been effected it was valid. The rule would therefore be discharged with costs.

#### Eschequer Chamber.

*Goldham v. Edwards.* May 9, 1856.

ACTION FOR DILAPIDATIONS TO VICARAGE HOUSE.—AGREEMENT FOR EXCHANGE.—SIMONY.

*To an action by a vicar against his predecessor for dilapidations the defendant pleaded, that while he was rector of C. and vicar of N. he agreed with the plaintiff to exchange their respective livings in their then state and condition, and that the plaintiff was not to call on him to pay for the repairs, and that the exchange was carried into effect and the plaintiff became his successor in the vicarage: Held, affirming the decision of the Court of Common Pleas, with costs, overruling a demurrer to the plea, that it was not bad under the 31 Eliz. c. 6, s. 8, on the ground that the contract was simoniacal.*

THIS was an error from the judgment of the Court of Common Pleas overruling a demurrer to one of the pleas in this action by an incoming against an outgoing incumbent for dilapidations in the parsonage house and premises, and which stated that while the defendant was rector of Caldecot and vicar of Newnham, he agreed with the plaintiff to exchange their respective livings in their then state and condition, and that the plaintiff was not to call on the defendant to pay for the repairs, and that the said exchange was carried into effect and the plaintiff became the defendant's successor in the vicarage. To this plea there was a demurrer on the ground that the contract was simoniacal under the 31 Eliz. c. 6, s. 8, which enacts, that "if any incumbent of any benefice with cure of souls, after the end of the said 40 days, do or shall corruptly resign or exchange the same, or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any pension, sum of money, or benefit whatsoever; that then as well the giver as the taker of any such pension, &c., shall loose double the value of the sum so given, taken, or had."

*Unthank* for the plaintiff.

The Court (without calling on *Chambers* for the defendant) said, that the plea was open to a reasonable and liberal interpretation, which was that the parties had agreed to exchange their respective livings in their respective conditions, and that such an agreement was not simoniacal, and the judgment of the Court below was therefore affirmed.

## ADVERTISEMENTS.

### BANK OF DEPOSIT, NATIONAL ASSURANCE AND INVESTMENT ASSOCIATION,

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The Interest is payable, in *January and July*, at the Head Office in London; and may also be received at the various Branches, or through Country Bankers.

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Westminster Branch, 1, St. James-square.  
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All further information may be obtained at the Chief Office, Tottenham-court-yard, or at the Strand Branch, 429, Strand; Lambeth Branch, 77, Bridge Road; Islington Branch, 97, Goswell Road; Finsbury Branch, 1, Shaftesbury Terrace, Victoria Street; Borough Branch, 60, Stones End Southwark; Piccadilly Branch, Regent Circus; Holborn Branch, 311, High Holborn, corner of Chancery Lane.

HUGH INNES CAMERON, General Manager.

#### SPECIAL NOTICE.

**CLERICAL MEDICAL and GENERAL**  
LIFE ASSURANCE SOCIETY, 99, Great Russell-street, Bloomsbury, London.

#### SIXTH DIVISION OF PROFITS.

All Persons who Assure on the Participating Scale before June 30, 1866, will be entitled to a Share of the SIXTH Bonus, which will be declared in the January following.

Proposals should be forwarded to the Office before June 1st next.

The Thirty-first Annual Report can now be obtained (free) of the Society's Agents, or of

GEO. H. PINCHARD, Resident Secretary.

The annual Commission allowed to Solicitors.

**Camden-town.**—Valuable Premises, formerly the Board-room of the Commissioners of Paying for the Camden Estate.

**MESSRS. DENT and SON** have received instructions from the Vestry of the Parish of St. Pancras, in whom the above property has become vested under the Metropolitan Local Management Act, to offer for SALE by AUCTION, on Wednesday, June 11, at Garraway's, all those substantially erected and valuable PREMISES, with the spacious Yard and Appurtenances, situate No. 10, on the north side of Pratt-street, to which there is a frontage of 52 feet 9, by a depth of 180 feet; held under the Marquis Camden and Prebend of Cantlowes for a term of which 71 years will be unexpired at Michaelmas, 1856, at a ground rent of £10 per annum. Further particulars and conditions of sale, with plans, to be had on the premises; at the place of sale; at the office of the Vestry Clerk, Vestry-hall, St. Pancras Old-road; and of Messrs. Dent and Son, surveyors, 36, Southampton-buildings, Chancery-lane, and 38, High-street, Camden-town.

Valuable and important Estates, St. Pancras, by order of the Vestry of the parish of St. Pancras.

**MESSRS. DENT and SON** have received instructions to offer for SALE by AUCTION, on Wednesday, June 11, at Garraway's, the very valuable and extensive LEASEHOLD PREMISES, situate 10, Edward-street, Hampstead-road, St. Pancras, heretofore the board room, office, stone-yard, and premises of the Southampton Paying Commissioners, now transferred to the Metropolitan Local Management Act, held under Lord Southampton for a term of which 65 years will be unexpired at Michaelmas next, at a ground rent of £29 15s.; also a Leasehold House and Premises, No. 7, on the south side of Charles-street east, originally erected for the said Commissioners, held likewise under the Southampton estate for a term of which 63 years will be unexpired at Michaelmas, 1856, at a ground rent of £3 15s. per annum; the latter underleased for a term of 21 years from Midsummer, 1849, at £50 per annum, the under-lessee having substantially repaired and improved the property. Particulars and conditions of sale, with plans, to be had on the premises; at the place of sale; at the Vestry Clerk's office, Old St. Pancras, where the leases may be seen; and of Messrs. Dent and Son, surveyors, 36, Southampton-buildings, Chancery-lane, and 38, High-street, Camden-town.

The valuable and important Freehold Manor of Newington, Barrow, otherwise Highbury, in the parish of St. Mary, Islington, in the county of Middlesex.

**MESSRS. DENT and SON** have received instructions to offer for SALE by AUCTION, at Garraway's on Wednesday, 18th June next, the above most valuable and improving MANOR, heretofore parcel of the possessions of the Crown, with all the customary advantages, arising from courts baron, courts leet, courts of survey, fines at the will of the lord, on death or alienation, quit rents, royalties, and all rights, members, profits, emoluments, and appurtenances thereto belonging. By a survey made by order of Henry Prince of Wales (the eldest son of King James I.) in 1611, the manor was founded to contain nearly 1,000 acres, of which 112s. 3r. 0p. were freehold, 407a. 0p. demesne lands, and 414s. 5r. 14p. were copyhold of inheritance. By the custom of the manor two years' improved rent is payable to the lord on death or alienation. The quit rents payable at this time amount to £3 18s. 10d. per annum, extending over very valuable property, estimated at upwards of £1,300 per annum, exclusive of those in abeyance. The emoluments to be expected to arise from lands and appurtenances, from which the quit rents and customary fines and payments have been omitted to be enforced, or are in abeyance, are very considerable; and the whole forms an important investment in every respect worthy the attention of gentlemen of the legal profession or the capitalist. Particulars and conditions of sale, with a plan of the manor, are in progress and will shortly be ready at the place of sale; the Angel Tavern and the Blue Coat Boy at Islington; the Gate-house, Highgate; the Archway Tavern, Upper Holloway; the Compasses at Hornsey; the Plough, Hornsey-road; at the offices of B. W. Powys, Esq., solicitor, 38 Russell-square; and of Messrs. Dent and Son, 36, Southampton-buildings, Chancery-lane, and Camden-town.

**Finchley.**—An elegant Freehold Residence, in the Italian style of architecture, with 12s. 1r. 5p. of land, the property of the late Throrwer Buckle Herring, Esq.

**MESSRS. PRICKETT and SONS** have been favoured with instructions to DISPOSE OF the above desirable RESIDENCE, by AUCTION, at the Mart, on Wednesday, June 4, at 12. This valuable estate, most desirably situate at East-end, Finchley, near to Trinity Church, in the county of Middlesex, commanding delightful views over Caeln-wood, the seat of the Earl of Mansfield, and the adjacent country. The residence is elegant and substantial, and has for several years past been occupied by T. B. Herring, Esq., lately deceased, and comprises, on the chamber floor, six principal bed chambers, five servants' rooms and water-closets, principal and secondary staircases; on the ground floor is a well-proportioned entrance-hall, a dining room 25 feet by 18 feet, elegant drawing rooms, communicating by folding doors, the extreme dimensions being 36 feet by 30 feet, a library, and convenient domestic offices, well-arranged yard, with brew-house, uniform erection of stabling and carriage-houses, pleasure-grounds, conservatory, grapery, kitchen gardens, and farm-yard, together with an enclosure of rich meadow land, containing together, 12s. 1r. 5p. The estate is freehold, except a small slip of copyhold, and well deserves attention, particularly from gentlemen requiring a good country residence near London. May be viewed, by tickets only, and detailed particulars, with plans, obtained in due time, on application to Messrs. Wood and France, solicitors, 8, Falcon-street, city; and to Messrs. Prickett and Sons, auctioneers and land valuers, 34, Southampton-buildings, Chancery-lane, and Highgate, Middlesex.

## ADVERTISEMENTS.

**Finchley, Middlesex.**—The excellent well-manufactured modern Furniture and Effects, the property of the late Throver Buckle Herring, Esq.

**MESSRS. PRICKETT and SONS** are instructed by the Executors to **SELL by AUCTION**, on the Premises, at East-end, Finchley, on Wednesday, the 11th of June, and following day, at 12, the genuine **HOUSEHOLD FURNITURE**, manufactured by Messrs. Seddon, comprising handsome mahogany four-post. Arabian, and French bedsteads, chests of drawers, Spanish mahogany wardrobes, washstands, and dressing tables with marble tops, together with the usual chamber requisites; the dining room furniture includes mahogany extending dining tables, sideboard, chairs, couches, dinner waggons, &c.; drawing room furniture, consisting of steel and or-molu fenders and fire-irons, couches, chairs, loo and occasional tables, fine plate chimney and pier glasses, carpets, and curtains, alabaster figures, vases and lustres, a handsome eight-day chiming clock; well-manufactured library furniture; cow, farming implements, and numerous other effects. Catalogues are in preparation, and may shortly be obtained on application to Messrs. Wood and France, solicitors, 8, Falcon-street, city; and to Messrs. Prickett and Sons, auctioneers and land valuers, 34, Southampton-building, Chancery-lane, and Highgate, Middlesex.

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**MR. G. J. KAIN**, Author of "**Kain's System of Solicitor's Book-keeping**," begs to announce that the Partnership lately subsisting between himself and **Mr. JOHN KAIN** having terminated, he has been joined by **Mr. WILLIAM CORBETT**, whom he has great confidence in introducing to his Clients; and that the extensive and increasing business of **LAW and GENERAL ACCOUNTANTS** will, in future, be carried on by and under the title of

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**LAW ACCOUNTANCY** being new to some of the Profession, it may be advisable to explain generally that it consists in drawing and settling Bills of Costs; adjusting and balancing Solicitors' Cash and Ledger Accounts; preparing Chancery, Executorship, or Administration Accounts; negotiating Law Partnerships; procuring qualified Clerks; collecting Agency Debts; auditing Solicitors' Accounts in town and country, of which a balance sheet can (under the new system) be presented weekly, monthly, quarterly, half-yearly, or yearly; procuring and forwarding suitable Account Books for Solicitors. Lists of Account Books as designed by us will be sent on application.

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The 5th Edition of *Kain's System of Solicitors' Book-keeping*, price 6s., post-free, will be sent on application.

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The above system, which was strongly recommended to the Profession in a review in the *Law Times* of July 22, 1854,\* is now in use in the offices of upwards of 400 solicitors in town and country, a great number of whom have voluntarily written to the author, pronouncing it to be in practice what it is in theory, both "simple and satisfactory." Those Members of the Profession who may be desirous of adopting the system, may inspect these communications, or have references to solicitors in almost every town in England and Wales.

\* (Extract from the review above referred to.)

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To Assign Guardian—Of Creditor's Claim—Of Service of Interrogatories—Of Service of Spa. for Costs—Of Service of Petition—Of Service of Spa. to hear Judgment—To obtain Distringas to retain the Sale of Stock—Of Service of Administration Summons—Of Service of Bill or Claim—Of Service of Summons originating Proceedings, not being an Administration Summons—Of Correctness of Receiver's Accounts—Of Next of Kin—To appoint Receiver—On Production of Documents—And Claim with Security—Ditto without

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# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, MAY 24, 1856.

### AMENDED COUNTY COURTS' BILL.

We are now in possession of the Lord Chancellor's Amended County Courts' Bill. The new provisions which have been introduced since we submitted the clauses to our readers, are of considerable importance, and others in the former Bill which appeared to be beneficial have been struck out in the re-print. It will be recollected, however, that neither the former nor the present Bill have yet been considered in Committee. The alterations now embodied in the re-print have, as we understand, been suggested by some of the County Court Judges, and the Lord Chancellor can scarcely be held responsible for the clauses now presented to the House. The other Law Lords have yet to bestow their attention on the whole measure, and we may reasonably anticipate considerable alteration before it will be in a state to pass the House.

In the meantime it may be useful to notice, 1st, the clauses which were in the previous Bill (as ordered to be printed on the 11th March) and now omitted; and 2ndly, the new clauses which have been added.

1. Actions for Malicious Prosecutions might, by the 10th section of the former Bill, be brought in the County Courts. This proposed jurisdiction is now withdrawn.

Where the claim exceeded 20*l.*, the party might, under the 13th section, serve the summons himself or by his attorney or agent. It is much to be regretted that this provision has been struck out: and we think it ought to have been applicable to sums of 10*l.*, if not less.

In actions on Contract above 20*l.*, or in Tort above 5*l.*, it was proposed by the 22nd section that the defendant might object to the cause being tried in the County Court. This clause, we think, should have been retained. It is not probable that a defendant would prefer the risk of a more costly trial

in a Superior Court, if he did not conceive that an important point was involved in the case and that he expected the decision would be in his favour.

The 26th section of the former Bill enabled either of the parties to obtain summonses to the witnesses and to serve them personally or by his attorney or agent, with or without a clause requiring the production of papers and writings. It must be regretted that this clause has been struck out, and the service left to the bailiff who has no peculiar interest, like the party or his attorney, in finding out the witness or securing his evidence.

The former Bill, by clauses 53 to 57 inclusive, provided that a Lessee proceeding in Equity should not have an injunction or relief without payment of the rent and costs;—that the tenant paying all rent with costs, the proceedings should cease;—that judgment for means profits down to a specified day might be given;—that a mortgagee might enter a plaint where the debt did not exceed 100*l.*;—and in ejectment by a mortgagee where the mortgagor paid the principal, interest and costs, into Court, the same should be deemed a satisfaction, and the mortgagee might be compelled by the Court to recover the mortgaged property. These provisions are omitted in the amended Bill, and the previous state of the law permitted to remain.

The 59th, 60th, and 61st clauses, which provided against the abatement of the plaint by the death or marriage of the plaintiff, or the death of the defendant, are omitted in the present Bill. We cannot see that this alteration is an improvement.

The 65th section of the last Bill, which repealed the 102nd section of 9 & 10 Vict. c. 95, enacting that no protection order or certificate in bankruptcy or insolvency should be available to discharge a defendant committed by a County Court, is omitted in the amended Bill.



The 36th section provided that a plaintiff under 5*l.* might be removed by certiorari under the order of a Judge of the Superior Courts, on giving security for costs. This privilege is now denied.

The 49th section provided, that if either party declared by affidavit that the title to the hereditament, &c., was in question, or that the rent or damage exceeded 20*l.*, the action shall be commenced in the Superior Court. This clause is now omitted.

Some other clauses of less importance are also omitted, and several others are extended or modified.

2. We proceed now to the principal provisions which have been *added* to the Bill since its first appearance. These are independent of some verbal alterations which have been made in other clauses, but which at present seem unnecessary to notice.

The most important addition to the Bill is made by clauses 16 and 17 of the reprint, by which if the plaintiff dwell more than 20 miles from the defendant, the plaintiff may bring his action in any County Court; but the defendant may, six days before the return of the summons, state on affidavit that he has a defence on the merits, and assign a good ground for a trial in another county.

The amended Bill (s. 27) provides, that no action shall be brought in a County Court on any judgment of a Superior Court.

The former Bill provided, that if the demand exceeded 20*l.*, the defendant was to give notice of his defence, or suffer judgment by default. It is now left in the option of the plaintiff to require the notice on pain of judgment by default (s. 28). If notice be given, the registrar is to inform the plaintiff thereof by letter.

Some change has also been made in regard to the plaintiff's right to costs in the Superior Courts, where he does not recover 20*l.* In the former print he was to have no costs unless, on application to a Judge, he should otherwise direct. In the amended Bill, it is provided, that the plaintiff shall recover no costs except in certain cases, and it shall not be necessary to enter a suggestion depriving the plaintiff of costs (s. 30). The excepted cases are where the Judge or presiding officer certifies there was sufficient reason for bringing the action in a Superior Court (s. 31); or, whether there be a verdict or not, if the Court or a Judge at Chambers be satisfied that there was sufficient reason to bring the action in a Superior Court, the Court or Judge may order the plaintiff his costs (s. 32).

The scale of costs to be allowed to counsel and attorneys is to be framed by five County Court Judges appointed by the Lord Chancellor. Such scale to be approved or altered by the Lord Chancellor (s. 41). It will be recollected that at present the scale is to be approved by a certain number of the Common Law Judges.

The 47th and 48th sections of the amended Bill enable the plaintiff to obtain a writ of certiorari, and remove the action from the County Court to a Superior Court at the discretion of such Court or a Judge, and on giving security for the claim and costs.

The 67th section provides, that affidavits to be used in County Courts may be sworn before a Commissioner to Administer Oaths in Chancery in England, or a London Commissioner to Administer Oaths in Chancery, or a Commissioner for taking Affidavits in the Superior Courts.

Under the 73rd section, the powers and responsibilities of the sheriffs with respect to replevin bonds and replevins are to cease, and the Registrar of the County Court of the district is to grant replevins; and under the 74th section, the registrar is to take securities.

But actions of replevin may be brought in the Superior Courts on giving security in such cases, s. 75. And if brought in the County Court, security to be given by the replevisor, s. 76.

Replevins may be removed at the defendant's instance into a Superior Court by certiorari, under the order of a Judge of such Court, upon giving such security as the Master may think fit, not exceeding 150*l.*, s. 77.

Then it is provided that no appeal shall lie from the County Court, if the parties or their attorneys, before the decision, shall agree in reciting that the decision shall be final, s. 79.

We would respectfully suggest to the learned counsel or officer who arranges for the press the amended clauses of Bills in Parliament, that the course sometimes adopted in amended Bills should be generally followed, namely, by printing the amendments, alterations, and additions, in a different type from the Bill as first printed, and further, that the clauses struck out by the Committee should be printed in smaller type at the foot of the page in which they first appeared. The Law Members in both Houses would then more clearly perceive the several alterations to be considered.

We have already referred to the present impracticability of entering upon any systematic or general investigation of the charities of the kingdom, but our inspectors have been actually engaged in the performance of their duties in various localities, and have examined the circumstances of very numerous charitable foundations, necessarily varying in magnitude and importance.

They have proceeded with the investigation (which is not completed) of the charities of the City of London, and have examined among other charities of minor importance those of—

The city of Hereford.

The towns of Leominster and Ledbury, in the county of Hereford.

The parishes of Sevenoaks and Goudhurst, in the county of Kent.

The towns of Northleach and Wotton-under-Edge, in the county of Gloucester.

The towns of Tipton and Walsall, in the county of Stafford.

The city of Salisbury and the town of Westbury, in the county of Wilts.

The towns of Nottingham.

— Northampton.

— Southampton.

— East Grinstead, in the county of Sussex, and

— Ilminster and

— Frome, in the county of Somerset.

In the result of such inquiries, and of others prosecuted under our direction, we have thought it our duty, in the course of the past year, to prepare schemes to be submitted to Parliament for the application and management of the following charities, viz. :—

1. Sherburn Hospital, in the county of Durham.
2. The Endowed School at Moulton, in the county of Lincoln.
3. The Grammar School and other charities, in the town of Spalding, in the same county.
4. The Grammar School and Sir Thomas White's Charity, and other charities in the city of Coventry.
5. The Grammar School and Sir Thomas White's Charity, in the town of Nottingham.
6. Dulwich College, in the county of Surrey.
7. The Hospital of Stoke Poges, in the county of Bucks.
8. Saint Mary Magdalen Hospital, near the city of Bath.

These schemes have been provisionally approved and certified by us, as required by the law; and they are set out in full, as is further directed by the Act of 1853, in the Appendix to this our Report, in which the grounds of our approval thereof respectively, and the other particulars required by the law, are also stated. The schemes in the two first cases were made the subject of a Supplementary Report submitted by us to your Majesty in the month of June last, but no measures having been founded on that Report, it is our duty to annex them to the present Report.

The schemes referred to, containing numerous provisions of detail, and intended in most instances for the organization of very comprehensive institutions, are unavoidably voluminous; and the Act having also imposed on us the duty of stating fully the reasons for which the schemes have been approved, the mode in which any objections to them have been disposed of and the particulars and grounds of all proceedings had in relation to such objections, it has been found expedient to extend our Report even more largely, by prefixing to each scheme a full statement of the foundation and condition of the charities proposed to be affected by it. These statements render any detailed observations on the same subjects unnecessary in this place.

The schemes for the reconstitution of the Sherburn and Magdalen Hospitals afford examples of proposed restorations of very ancient institutions to purposes kindred to those of which they were the instruments at very remote periods.

The scheme relating to Dulwich College is designed to effect the expansion of a munificent institution, in accordance with the plan of the founder, to enlarged purposes commensurate with the extension of the value of the endowments.

The schemes for the enlargement of the benefits and for the regulation of the Moulton School, and for the better adaptation of the Hospital of Stoke Poges to the limited objects which its contracted means are now capable of accomplishing, involve little variation of the original trusts.

The schemes for the improved application of the charities of Coventry, Nottingham, and Spalding are examples of proposed applications of funds to purposes of great public advantage, but to which they have not hitherto been appropriated.

The scheme which relates to the charities of Coventry proposes to deal with funds which have been applicable by way of loans to young freemen, but have become so excessive, that there is an existing accumulation exceeding 20,000*l.* wholly unemployed, and which, moreover, receives accretions equivalent to more than a yearly amount of 300*l.*

There are even much larger funds arising under the same and other foundations, and exceeding in yearly income 2,000*l.*, the subject of direct, and somewhat indiscriminate pecuniary distribution among the inhabitants.

It is proposed with these ample resources (after reserving a sufficient loan fund) to establish and largely endow an institution, which all parties interested in the welfare of the city concur in recommending, namely, an industrial school for the maintenance and instruction of the daughters of the poor; to aid and expand the benefits of a high school in which classical and commercial education shall be accessible on very moderate terms to all the inhabitants, with a reservation of some preferential advantages to the children of freemen; and to provide other facilities for educational improvement

The Rules of Construction of Revenue Acts are thus stated by Mr. Trevor :—

"The general rule, that all revenue Acts are to be construed strictly with reference to the rights of the subject is well known, *Williams v. Sengar*,<sup>1</sup> *Reed v. Wilmot*,<sup>2</sup> liberal construction being given to any words of exception confining their operation. *Warrington v. Furber*,<sup>3</sup> for Lord Hardwicke says, in *Fludger v. Lombe*,<sup>4</sup> that laws that take away people's franchises must be strictly construed; and *Holroyd, J.*, in *Buckridge v. Flight*,<sup>5</sup> that where Acts of Parliament vary or take away the rights of parties, they ought to be strictly construed: see also *Cockburn v. Harvey*.<sup>6</sup> It is a well-settled principle, that every charge on the subject must be imposed by clear unambiguous words; *Denn v. Diamond*,<sup>7</sup> *Wroughton v. Turtle*,<sup>8</sup> *The Attorney-General v. Marquis of Hertford*,<sup>9</sup> nor will Courts of Law apply a Revenue Law to a case which does not strictly come within the letter of the Act; *Tomkins v. Ashby*,<sup>1</sup> *Denn v. Diamond*,<sup>2</sup> *Platt v. Routh*.<sup>3</sup>

"All Stamp Acts being a burden on the subject, must be clearly expressed whenever they impose the burden, *Doe d. Scruton v. Smith*,<sup>4</sup> for the law on the subject of stamps is altogether *positivi juris*; in involves nothing of principle or reason, but depends altogether on the language of the legislature: *Morley v. Hall*.<sup>5</sup> The Legacy Duty Acts, which impose duties on the subject, must be construed strictly, and consequently, if there be any doubt whether duty is payable or not, the parties sought to be charged are entitled to have the benefit of that doubt, *Hobson v. Neale*,<sup>6</sup> and, as far as possible, refinements in the construction of them are to be avoided; *Shirley v. Earl Ferrers*.<sup>7</sup>

## LAW OF ATTORNEYS AND SOLICITORS.

### LIEN FOR COSTS ON LAND RECOVERED.— REGISTERING ALLOCATUR.—OPENING ACCOUNTS.

THE plaintiff was formerly the solicitor of James Neale, since deceased, who in the year 1836, was employed to prosecute a claim for the recovery of an estate in Leicestershire, in which he was successful. In February, 1838, under the advice of the Rev. Mr. Taylor, a gentleman who had taken a lively interest in his affairs, James Neale discharged the plaintiff from being his solicitor, and appointed the defendant,

Mr. Remnant, to be his solicitor in his place. The plaintiff thereupon asked for his bill of costs and disbursements, and delivered his bill in April, 1838, which was taxed under an order of the Court, and the Master's allocatur was made on April 11, 1839, finding that on the balance of the bill of costs and the cash account 1,238l. 2s. 3d. was due to the plaintiff. In spite, however, of the plaintiff's exertions to serve James Neale with the allocatur, he was unable to do so until November, 1840, and consequently could not get the order absolute to pay the amount due until January 28, 1841. On the 30th of that month he registered the order, but never obtained payment, and he re-registered on November 30, 1846, and November 30, 1852.

The Master of the Rolls (after stating the above facts), said :—

"The questions in this case are, what are his rights on the estate so recovered by his exertions, as against the defendant Remnant, who has various securities on them? The fee simple of the property recovered is wholly absorbed by the combined effect of the charges of the plaintiff and defendant. James Neale himself is dead, and his son, who represents him, admits this to be the case, and he neither claims nor expects any benefit from this or any other proceedings relating to his property. The questions, therefore, lie wholly between the plaintiff and the defendant Remnant.

"Various claims were advanced, but that the plaintiff is an incumbrancer on this estate, and that he is entitled to a decree to redeem the defendant Remnant, and foreclose the equity of redemption, is not disputed. The extent of his incumbrance, also, is not in question; but where it is to rank, whether before all or any of the defendant's charges, is the question to be determined. In order to obtain absolute priority over the defendant, various contentions were raised by the plaintiff, some of which are suggested by the bill, and were urged at the hearing of the cause, which I then disposed of, but to which I will shortly refer.

"The first of these was, that the plaintiff was entitled to a lien on the real estate recovered for the amount of his charges properly incurred in so doing. This was urged on the principle on which the Court acts, when it refuses to part with a fund in Court, produced by the exertion of a solicitor, until his costs of recovering it have been discharged. At the hearing I expressed my opinion that no such lien exists, either at law or in equity on a real estate recovered by a solicitor. It is, in fact, contrary to all principle; it would in truth evade the provisions of the Statute of Fraud more completely even than the case of an equitable mortgage by deposit of title-deeds, and would be obnoxious to many other principle which I adverted to at that time.

<sup>1</sup> 10 East, 69.

<sup>2</sup> 7 Bing. 582.

<sup>3</sup> 8 East, 245.

<sup>4</sup> Cas. temp. Hardw. 307.

<sup>5</sup> 6 B. & C. 55.

<sup>6</sup> 2 B. & Ad. 800.

<sup>7</sup> 4 B. & C. 245.

<sup>8</sup> 11 M. & W. 567.

<sup>9</sup> 14 M. & W. 294.

<sup>1</sup> 6 B. & C. 542.

<sup>2</sup> 4 B. & C. 245.

<sup>3</sup> 3 Beav. 265.

<sup>4</sup> 8 Bing. 152.

<sup>5</sup> 2 Dowl. 497.

<sup>6</sup> 17 Beav. 185.

<sup>7</sup> 1 Phill. 172.

"It was, secondly, contended on behalf of the plaintiff, that the fact of registering the allocatur of the Master had the effect of a judgment and created a charge on the estate; but this also I decided against the plaintiff, such a claim being wholly unsupported by any provision to be found in the Statutes of 1 & 2 Vict. c. 110, or of 2 & 3 Vic. c. 11, on which Statutes alone, if at all, such a claim could rest. The sections referred to apply only to orders to pay a sum of money, but the allocatur of the Taxing Master, which finds the amount due, is not an order to pay that amount, which must be subsequently obtained.

"In the third place, the plaintiff contends, by reason of the conduct of the defendant Remnant, he, the plaintiff, is entitled to priority over all the incumbrances of that defendant, or at least over those which are subsequent in date to his judgment; and as to the others, even if he be not entitled to priority, he contends that he is entitled to open the account between James Neale and the defendant, and that Remnant is only to be allowed so much as would appear to have been the amount actually due to him at the respective times when he obtained these charges, in case at that time an account had then been taken between the late defendant James Neale and the defendant Remnant, and if his bills of costs had been properly taxed at that time.

"And fourthly, the plaintiff contends that under the clauses of the Statute above referred to, he is entitled to priority over, at least all those charges of the defendant which are subsequent to the 31st of Jan. 1841, when the plaintiff obtained and registered an order against Neale to pay the amount found due on the Master's taxation. \* \* \* The plaintiff contends, that all these securities were obtained with a view of defeating his judgment and his just claim for costs, due for business done, and without which the very property on which the defendant had his charges would not have existed, and that the order for the payment of his costs, which constitutes his judgment was purposely delayed, and every device resorted to for that purpose. And the plaintiff contends, that as a consequence arising from this conduct, this Court ought to treat the proceedings of the defendant Remnant as fraudulent, and ought to postpone his charges to that of the plaintiff. I expressed an opinion at the time of the hearing, that this claim could not be maintained, and that whatever may be the opinion of the Court, as to the general course of conduct which has wasted this poor man's estate, I see no ground for acceding to the contention of the plaintiff, that as between himself and the defendant, he is entitled to priority over him. \* \* \*

"The next point I have to consider, subject to those I have already mentioned, is whether the plaintiff is entitled to open the account as between the defendant Remnant and James Neale, whether he is now at liberty to canvass the propriety of each item, including therein the bills of costs which constituted the amount

for which the security was given. I stated at the hearing, and I repeat my opinion, that in no event could the position of the plaintiff stand higher than that in which James Neale could have stood, had he now sought to take this account, and that if James Neale could not have been permitted to go into such an inquiry, the plaintiff is also concluded. In saying this, I desire not to have it supposed that I put the rights of the plaintiff as high as those of Neale would have been, but I am confident at least that he can stand no higher. Regarding then the case in this point of view, although I am by no means satisfied with what I see of the accounts of Mr. Remnant, and although I am also satisfied that Mr. Taylor had no means of judging of the propriety of the bills delivered, and that in fact James Neale, in the matter of these securities was *inops consilii*, still after an acquiescence of 10 years in bills of costs and in accounts stated, I should not allow James Neale to open such an account, unless actual fraud, such as intentional misrepresentation or concealment, were proved. But this, as I have already said, is already disposed of in this case. The result is, that the plaintiff must take the accounts of the defendant Remnant as he finds them settled by the defendant Neale, and that he is not entitled now to open them or tax the bill of costs. \* \* \*

"I think it clear, on the construction of these clauses, that the previous registrations of this order are to be treated as nothing. It is true, that it was under the first Statute a valid and subsisting charge, when the defendant Remnant advanced his money or obtained his security; but it ceased to be any charge at all when the five years had elapsed, and it became, so far as regards his interest, exactly as if it had been paid off, and the registration again operates only as if a new judgment had been created and a new charge had been put on the land. Under the Statute, therefore, I am of opinion, that the plaintiff can only rank as an incumbrancer from the 30th of November, 1852. The Statute does not affect any right which the plaintiff might have independently of its provisions, but, except under the Statute, this order would have no effect on the land of James Neale." *Shaw v. Remnant*, 20 Bear. 157.

## LAW OF COSTS.

### OF SECOND TRIAL, WHERE JURY DISCHARGED ON FIRST.

ON the trial of a cause before *Wightman, J.*, it appeared the jury retired to consider of their verdict, and after remaining some time in consultation, returned into Court and informed the learned Judge that they could not agree upon a verdict; some of them adding, that there was not the slightest probability of an

<sup>1</sup> 2 & 3 Vict. c. 11, ss. 4, 5; 3 & 4 Vict. c. 82, s. 2.

agreement. The Judge therefore suggested that it would be useless to detain the jury any longer, and they were accordingly discharged. The cause was tried again, and the verdict found for the plaintiff. The Master, in taxing costs, allowed the plaintiff his costs of the first trial, including costs of a special jury, whereupon this rule was obtained to review his taxation.

Lord Campbell, C. J., said "The rule for a review of the taxation must be absolute. It has been decided, that where the Judge of his own authority discharges the jury, the party succeeding in a subsequent trial is not entitled to costs of that in which no verdict was given: and I think it would be inconvenient and improper to draw a distinction by saying, that if counsel do not stand out and insist upon the jury being locked up, the case shall be altered as to costs.

Coleridge, J. added, "This was a discharge by the Judge. The consent of counsel amounts only to this, that they do not object, and will not raise any point, on which possibly the proceedings might be questioned afterwards. Though they waive this, the discharge is still the act of the Judge." The rule was therefore made absolute. *Bostock v. North Staffordshire Railway Company*, 18 Q. B. 777.

See also the 54th Rule of Hilary Term, 1853, which directs, that "if a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeeded on the second."

## SITTINGS IN CHANCERY.

Trinity Term, 1856.

Lord Chancellor.

May 22, 30; June 5, 12.—Appeal Motions and Appeals.

May 23; June 11.—Petitions and Appeals.

May 24, 26, 27, 28, 31; June 2, 3, 4, 6, 7, 9, 10.—Appeals.

May 29.—Queen's Birthday, no Sitting.

Lords Justices.

May 22.—Appeal Motions.

May 23.—Petitions in Lunacy, Appeal Motions, and Appeal Petitions.

May 24, 26, 27, 28, 31; June 2, 3, 4, 7, 9, 10, 11.—Appeals.

May 29.—Queen's Birthday, no Sitting.

May 30.—Petitions in Lunacy, Appeal Motions and Appeals.

June 5, 12.—Appeal Motions and Appeals.

June 6.—Petitions in Lunacy and Bankruptcy, and Appeal Petitions.

## Master of the Rolls.

May 22, 30; June 5, 12.—Motions.

May 23; June 11.—General Petition Day.

May 24, 26, 27, 28, 31; June 2, 3, 4, 6, 7, 9, 10.—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions.

May 29.—Queen's Birthday, No Sitting.

## Vice-Chancellor Kindersley.

May 22; June 5, 12.—Motions and General Paper.

May 23; June 6.—Petitions (unopposed first).

May 24, 31; June 7.—Short Causes, Short Claims, and Causes.

May 26, 27, 28; June 2, 3, 4, 9, 10, 11.—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions.

May 29.—Queen's Birthday, no Sitting.

May 30.—Petitions and Motions (unopposed Petitions first, then Motions, and then remaining Petitions).

## Vice-Chancellor Stuart.

May 22; June 12.—Motions.

May 23; June 6.—Petitions and General Paper.

May 24, 31; June 7.—Short Causes and Claims, and General Paper.

May 26, 27, 28; June 2, 3, 4, 9, 10, 11.—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions.

May 29.—Queen's Birthday, no Sitting.

May 30.—Petitions and Motions.

June 5.—Motions and General Paper.

## Vice-Chancellor Wood.

May 22, 30; June 5, 12.—Motions and General Paper.

May 23, 26, 27, 28; June 2, 3, 4, 6, 9, 10, 11.—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions.

May 24, 31; June 7.—Petitions, Short Causes, and Claims, and General Paper.

May 29.—Queen's Birthday, no Sitting.

The days are excepted on which the Lord Chancellor shall be engaged in hearing Appeals at the House of Lords, and the days (if any) on which the Lords Justices shall be engaged before the Judicial Committee of the Privy Council.

Short Causes, Short Claims, Consent Causes, Unopposed Petitions, and Claims will be heard at the Rolls every Saturday during the Sittings (the unopposed Petitions to be taken first) at the Sitting of the Court. Consent Petitions must be presented and copies left with the Secretary on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Claims will be placed in Vice-Chancellor Wood's Paper after Short Causes, &c., on each Saturday in precedence of the General Paper.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

*In re Tolson's Patent.* May 3, 1856.

PATENT.—FURNISHING COPY OF PROVISIONAL SPECIFICATION TO OTHER PATENTERS.

An application was refused, with costs, for an order on a petitioner for a patent to furnish a copy of his provisional specification to certain patentees of an invention which they alleged to be similar to his.

THIS was a motion, on behalf of certain patentees of an invention, to have copies of the provisional specification of the present petitioner for a patent for a similar purpose, in order to ascertain whether it infringed on their invention.

T. Webster in support; Hindmarch, contra.

The Lord Chancellor said, that it might be very injurious to an inventor to have his specification seen prematurely and before it was published to the world generally, and refused the motion accordingly, with costs.

### Vice-Chancellor Wood.

In re Wright's Trusts. April 7; May 7, 1856.

WILL.—CONSTRUCTION. — “CHILDREN.” — ILLEGITIMATE CHILD BORN IN FRANCE. — DOMICILE.

*A testator bequeathed a sum of stock unto and equally between or among all and every the child and children of his son who should be living at the time of his son's decease: Held, that a daughter, who was born of the son in France before marriage, was not entitled to share in the bequest, where it appeared that the son's domicile at the time of the birth was English and not French.*

THESE were two petitions on behalf of the two daughters of Joseph Wright, deceased, for payment out of Court of a fund paid in under the 10 & 11 Vict. c. 96. The facts sufficiently appear from the judgment.

Willcock and Karslake for Miss Wright, one of the daughters; Roll and Surragé for Madame Binet, another of the daughters; W. M. James and Waller for Mrs. Williams, an illegitimate daughter; Hetherington for the trustees.

*Cur. ad vult.*

The Vice-Chancellor said:—“The question in this case is, who are the persons entitled to claim under a bequest of a certain sum of 4,000*l.* and odd, contained in the will of the testator, Mr. Wright, by which will the property was given to the children of his son, William Wright, who should be living at the time of his death. At the time of his death there were two children living, who were born of a first marriage which he contracted, and who were indisputably legitimate. The whole question in this case arises upon the claim of a third party, a lady, who was born in France, as the fruit of an intercourse between Mr. Wright and a French lady, whom he did not marry for more than 20 years after that period—whom he then married, and whose child it is contended, by the effect of that subsequent marriage, has become legitimate, so as to be, at the time of the death of her father, William Wright, one of his legitimate children, and therefore, entitled to participate with the other

two children in the bequest made by the testator.

“I will first state what the facts are that are established indisputably in this case, before considering how the law is to be applied to those facts. It seems that Mr. Wright, who was a person of extremely eccentric character and habits, was clearly in the first place a person who had by birth, by his domicile of origin, an English domicile,—of that I think there is no question. He went at an early period of his life into Scotland—he appears to have married in Scotland; but there is no evidence of his ever having lost the English domicile, and he certainly afterwards returned to England and there had an establishment and lived with his wife at sundry places, and at the time of her death he was living at Collumpton. The wife died in 1821. At this time Mr. Wright continued to have his original domicile. She having died in 1821, Mr. Wright, as it appears from the evidence of the daughters in the cause, was distressed at finding himself considerably in debt; that is not a matter in dispute on either side. His income was very small, it consisted of scarcely anything except the income of this property of which he was tenant for life, which is now in question in this suit,—something between 200*l.* and 300*l.* a year in the 5 per cents.; and in this state of things he was astonished to find that he was involved in a state of debt of which he was utterly ignorant, because his wife during her lifetime managed all his affairs. He broke up his establishment, went first to Bath under a feigned name, and ultimately went across the channel to Dunkirk, whether with a feigned name or not is not certain,—one of the daughters says that was not so; however, he went to Dunkirk, and clearly at that time with the view of evading his creditors, and at the same time with an honourable intention, which he ultimately fulfilled, of paying his debts. Now, it was in the month of July, 1823, I think, that he thus went to France; and then he became acquainted in France with the mother of the present claimant, and the child which was the fruit of the intercourse that took place between them was born in December, 1824. Their intercourse, therefore, took place at the usual period anterior to that time, some time about March or April, 1824.

“Now, the first question that I have to consider upon the facts is, what was his domicile at the date of the birth? That, I think, is a matter of very considerable importance. It appears to me perfectly clear upon the evidence that his domicile remained English at the date of the conception and birth of this child. The evidence is simply this,—and there is nothing at all to meet that evidence, except one single circumstance very loosely deposed to, without any evidence at all as to the source from which it is derived, and as to which no further inquiry is necessary because it does not appear to me at all to change the nature of the case. It appears to me quite certain the original

cause of his leaving England was his being in debt, which debts were not cleared off till 1836. That is quite clear. There is no evidence of any declaration before 1832 at the earliest, if quite so early—1832 being the time when he went to Paris, and when some gentlemen say they had conversations with him as to his intention of returning or not returning to this country. He lived partly at St. Omer, where he went through an apparent ceremony of marriage which was ineffective, but which was before an English clergyman, which so far showed an indication of his considering himself a domiciled Englishman. That ceremony of marriage took place before he finally left Dunkirk. He lived at Dunkirk in lodgings. This lady says, which is the only way in which it can be brought back anterior to her birth, that he took a house which he was occupy for three, six, or nine years at 500 francs a year. He became a teacher there in the hope of recovering himself and of his being able to pay, which he ultimately did, the whole of his debts. All the evidence we have, therefore, is this, that he took a house limited to those several periods. He did not exactly reside in it for the whole term, because according to her own statement he seems to have broken off somewhere after about five years of the occupancy. That literally is the only evidence you have on the subject of domicile up to that time. I do not think it right that the matter should be postponed for further inquiry upon that subject,—it is not at all probable that any further evidence will alter that state of things. I will assume in her favour that the house was so taken, his debts still existing in England, he still living on the coast, not removing himself to any distance, but merely the fact of his taking this house for a certain limited period which he might readily determine, and the first period of which, or the second period of which, he might conceive would coincide with the payment of his debts, at which time he would be at liberty to return to England; I say there is not a trace or shadow of any evidence to show that he was otherwise than a domiciled Englishman at the time of the conception and birth of this lady.

"That being so, he proceeded in 1832 to live at Paris, or rather I think before 1832, because there is some question about his having been called on to serve in the national guard at an earlier period, but at all events considerably after the birth of this lady he proceeded to live at Paris. When you get to Paris there is then some evidence of his having intended to fix himself in France and to establish his domicile in that country—and this is the only circumstance which has rendered it necessary for me to take time to consider this judgment, because, had he remained clearly and indisputably, a domiciled Englishman, then I apprehend the law is clearly settled by the decided cases, and that the whole of the English law must be applicable, both to the birth of this lady and to the subsequent marriage, and that in fact no legitimation could possibly take effect. The

difficulty created is this, that there is conflicting evidence with reference to domicile from a period anterior to the marriage he contracted; and for the purpose of this judgment, I have been obliged to consider, (unless I should be disposed to have any further inquiry as to the question of domicile,) and to assume his domicile to be French at the time of the marriage; it is not proved by the evidence, and it is very far from being proved. The evidence only seems to go to this extent, he does seem to have told several persons after the payment of his debts, that he had originally left England with reference to his debts—that he was particularly fond of and devoted to the violin, that he could not bear to be teased or interfered with by his relations when he endeavoured to occupy himself with his favourite amusement, and upon the whole, he preferred a residence in France. But on the other hand you have the circumstance of his contracting a marriage at the English Ambassador's Chapel, in the year 1841, before the marriage which he contracted, according to the French form; and the evidence, as I said before, is, after all, not of a very strong or conclusive character, neither precise periods, nor times, nor places are given or detailed, but very general observations of this particular character; and certainly it is clear that if I had to decide it adversely to the two daughters who claim alone to be legitimate, on the ground of domicile, I should not decide it so against them; but neither on the other hand should I be prepared to say I ought to exclude this lady, on the assumption that he continued a domiciled Englishman. Therefore I am obliged to assume, and I hold it be clearly proved, that he was a domiciled Englishman at the time of the conception of birth; but I must also hold it, for the purpose of this inquiry, to be taken that he was so domiciled in France at the time of his second marriage, the first of which took place in 1841, at the British embassy, and the other of which took place in 1846, according to the French forms. The marriage having taken place in 1846, and the death in 1854, the question upon this state of facts is, that of an Englishman leaving this country being the putative father, as we should say, of an illegitimate child, at the time he was himself an Englishman, afterwards becoming a domiciled Frenchman, and contracting first a marriage at the English embassy, and afterwards contracting a marriage in the French form, with the mother of that child.

"Now, in order to come to a conclusion upon that state of facts, I shall first consider how each Court—the Courts in France or the Courts in Scotland, where similar law prevails, deals with cases which relate to persons who are clearly domiciled, if I may so express it, subjects of the country before whose tribunals the case comes to be determined. There are a certain number of points which appear to be clearly and distinctly established at this time—one of those is, that the law of domicile is carried by the domiciled party into any foreign country in which he may be residing, and that

it signifies nothing whether or not the marriage be in a country where the law is different from the law of his domicile, the marriage must be celebrated according to the law of the country in which he happens to be, in order to make it an effective marriage; but when that marriage is celebrated, the whole effect of the marriage contract is, that of the country to which the party belongs by domicile. It is really only a modification of the questions as to marriage and *status*; it is nothing more than this, that it is merely another form of that doctrine, which has been settled, that as regards all personal contracts the law of domicile shall prevail.

"Now, it has been settled in France from a very early period,—and that in the case of *Munro v. Munro*, 7 C. & F. 842, and *Conty's case*, *Guesniere Journ. des Princ. and des Parl.*, vol. 2, b. 7, c. 7,—that if a party domiciled Frenchman have a child in England, and also marries in England according to the English form, nevertheless the law of France prevails, and that child is held to be legitimate. That is the case called the case of *Conty*; in the subsequent case of *Munro v. Munro*, and referred to in many cases which have come before the House of Lords, and the case distinctly followed in *Munro v. Munro*, that being a decision of the Scotch Court because the House of Lords was sitting as a Scotch Court,—the House of Lords held, the same circumstances having happened with reference to a domiciled Scotchman, namely, that he had connection with an Englishwoman in England and afterwards married that woman in England, nevertheless the law of Scotland was held to prevail in respect of his domicile, and that child was legitimated by the subsequent marriage.

"So far the case is clear and no difficulty can arise upon it. On the other hand, the contrary doctrine is equally settled in all countries, namely the converse of it, that if a party affected by the law of England, and having an English domicile were to have this connection with any party in France, and afterwards intermarry in France, the law of England would apply with respect to the domicile, and that child would be illegitimate. Having got thus far, I have had to inquire (and here has arisen the difficulty in the case) whether the circumstances I have here to consider have ever occurred, and I do not think it has ever been found that the circumstances have occurred which occur in this case, of the party domiciled at the time of the birth of the child in England, and domiciled, as I am obliged to assume for this purpose, at the time of the marriage with the mother in France. I have found no case analogous to it. The case of *Lloyd*, which was the only case bearing that way,—a recent case in one of the French modern reports furnished to me,—was not a case of that description; because in *Lloyd's* case the Court began by asserting that *Lloyd's* domicile of birth was altogether uncertain. There seemed to be an obscurity about the gentleman;—there was an obscurity as to his

domicile of origin, nobody knew where he came from; and the Court seem to have held that under all the circumstances they were satisfied, there being that uncertain domicile of origin, and therefore there being not the same difficulty to get over with regard to the establishment of a new domicile, they held him domiciled in France, and they treated it as the case of a party under a French domicile and so domiciled in France, they held that the children born before the marriage were legitimated by the marriage.

"Having this peculiar case to consider, I have first had to turn my attention to what the law of France is, with regard to the legitimation by subsequent marriage, and for the present I divest it of the peculiar ceremonies and forms required by the Code Napoleon, and I rather look at it as a part of the general Roman law adopted by the law of France, and something similar to that which is rather adopted by the law of Scotland. As regards the Roman law adopted in France, I think this is clear, there have been many decisions there which have cleared the ground of some questions which still remain apparently in a state of doubt. In Scotland they have cleared the question of that, and the law has settled itself down to this. In the first place, as to the Roman law, it seems to be conceded that it proceeded wholly on the footing of the subsequent marriage, evidencing a contract at the time of the connection of which the child was the fruit. That seems to have been the old Roman law; and according to that old Roman law, as one finds it stated in his collection by Merlin,—a valuable collection under the head of *Legitimation* in his *Repertoire*,—under the old Roman law there was felt a difficulty with reference to an intermediate marriage, and according to Merlin's view, he thinks the better authority is, as regards the old Roman law, that an intermediate marriage prevents the possibility of legitimatising the children before the marriage takes place by a connection not immediately followed by marriage. The French law has got rid of that difficulty, and it is now settled that the intermediate marriage does not legitimize the children, and the rule is laid down by Pothier as to what the French law is when an intermediate marriage takes place. He says,—'The fiction of retroaction back to the period of the marriage is not absolutely necessary for legitimation, it is quite sufficient that you can favourably suppose that at the time of this connection the parties who entered into it did so with a view to a marriage which they then proposed to contract, that one of the parties afterwards changed his intention by marrying another person, and that after the dissolution of that marriage the parties executed their original design.' That is the law apparently which Pothier seems to consider as settled in France, and which is adopted by Merlin as being the law in the French Courts. It is very important again to go back to what the theory is with reference to this; it must rest on contract; in some way or other it is



founded on contract. Originally the Roman law seems to have founded it upon a much more intelligible principle than this laid down, because they held it to be an inchoate contract, not perfected, which, when once perfected, the contract was thrown back to its inchoate period; and accordingly if that inchoate contract was interrupted by the circumstance of an intermediate marriage, which rendered the first marriage for a long period impossible, they supposed that the effect of the contract was put an end to. Now, it is so clear that it is a contract, that both the Roman law and the French law hold distinctly that if the parties at the time of their original intercourse are not in a condition to enter into such a contract, no such contract can take place, and no possibility of legitimation arises. For instance, it has been held in France (and the cases are given here in Merlin), that if one of the parties were married at the time of the conception, although the wife of one of the parties died before the birth, still it is impossible for that child to be rendered legitimate if either of the parties were married before the conception.

"So, again, with regard to many other cases, with regard to a person being in priest's orders, if there is any disability whatever at the time of the contract, then that disability prevails, and it is impossible that the child can be afterwards rendered legitimate.

"Then there is another point, not altogether unimportant, with reference to the particular case before me, which has also been decided. Merlin gives you the case in which it has been held, after a good deal of difference of opinion in France, that if the fact existed of the marriage of one of the parties, though the other party, the woman, were entirely ignorant of the fact, and entirely innocent of that fact, still the effect can never take place of rendering that offspring legitimate by a subsequent marriage, that must wholly depend on the theory of contract. There might be some doubt whether it did not depend on the ground of immorality. Some of the earlier authorities speak of that as one of the causes why such an effect should not be given to an offspring arising from an adulterous intercourse; and although one of the parties is wholly ignorant of the adulterous intercourse, the Court of France has held, that there was an obstacle which prevented the possibility of such a contract being entered into as would, upon a subsequent marriage, render the child legitimate.

"There is only one other point I have to notice on the French law which seems to have been determined by the French authorities, and that is this:—It has been determined that although a party may at the time of his subsequent marriage recognise the child as his own offspring, still if it can be shown that the child was not his own offspring, or if it can be shown to be a matter of doubt, or it was not proved that the child was his own offspring, the matter being brought into doubt then the

legitimation does not take place. That is also important with reference to the peculiar circumstances of this case, and that seems to have been decided in a case which is reported in page 37 of the 17th volume of the *Repertoire* of Merlin, under the article *Legitimation*, and was the case of one Antoine Salnove, who wished to render his children legitimate by a subsequent marriage which he had by a person of the name of Marie Laurent. It appears that he only said, "*Qu'il y avait un bon part.*" The woman it appears was a woman of bad character, and he said, "*Qu'il y avait un bon part,*" leaving it to be inferred that they might possibly be the offspring of others. And in that case, notwithstanding the declaration of legitimacy afterwards made, the Court would not hold the children legitimate. That seems to be the state of the French law upon this particular subject.

"Now, what is the state of the English law with regard to children born out of wedlock? of that there can be no doubt. Ever since the discussion that took place in *Birtwhistle v. Vardill*, 2 C. & F. 593; 7 *ib.*, 893, it is now acknowledged by all parties, and by Lord Brougham, who was opposed to the view of the Judges, that the Statute of Merton, though it is confined to the inheritance of lands, is nevertheless to be taken as a declaratory act of the common law as it existed. That is strongly verified by the presumption which arises from the cotemporaneous change in the form of the writ directed to the bishop, which used to be open; but which, from fear of the bishop's attachment to the law of the church, they have altered, and instead of sending an open writ to him as to bastardy, in an open form, they always send to inquire whether the child was born in wedlock. It appears clear that, according to the English law, a child not born in wedlock is not in truth the child of anybody but its mother—it is *filius matris*, and it is impossible for an Englishman, as long as he remains subject to the English law, to render that child legitimate or acquire any connection with that child. What I apprehend the effect of the English law to be is this:—I apprehend, with regard to the English law, the offspring of any woman who is not married can be attributed to no father whatever, except for certain criminal purposes of bastardy; that the relation of parent and child in no way exists as regards the father, the connection between the putative father and the child is simply zero, and nothing done at any future period by the father can legitimatise that child.

"Then the question arises, is that law to be applied in the first place as regards the birth of this particular child? Is it to be applied to the child of an Englishman residing in a foreign country, and having intercourse with a person of that country? The point here seems to be a certain degree new. I do not think the case of *Shedden v. Patrick* (Dict. Dec. "Foreign" App. n. 6, 1st July, 1803), has in truth determined any point like this. The case of *Shedden v. Pa-*

trick seems to have determined a point of a different character. In the first case of *Shedden v. Patrick*, it was assumed that the domicile was American, and Lord St. Leonards doubts that in some respects. I think it is quite clear from Lord Redesdale's judgment, he assumed it to be an American domicile, and thence all the consequences would necessary follow, that the child would be legitimate, because that was the law of the country; but in the second case the Court, for the purpose of trying the question, whether there was any fraud in the suppression of the fact of its being a Scotch domicile, for the purpose of trying that fact, the Court assumed, in the second case of *Shedden v. Patrick*, that it was a Scotch domicile; and then the question came to be this, the claimant was an alien, unless he could avail himself of those Statutes which were passed and enacted, that where the father (Lord St. Leonards pointedly calls attention to that fact) is a natural born English subject, the child of the father, though born abroad, is a natural born English subject. The second Statute of George limited it to the father, and therefore the case they had to determine was this, what is the paternity of this child? Can you predicate that he was born of an English father, and they said no—and the reasons assigned were the reasons expressed in Lord Redesdale's language, at the time he was rather thinking of an American domicile, which was quoted with approbation by Lord St. Leonards—the expression is, 'the law of America touched him at his birth, and at his birth you could not predicate that he was the son of an English father'—and Lord Brougham puts it in this way. Lord Brougham has always held strongly to the doctrine of following the law of domicile, Lord Brougham says: 'true it is you must follow the law of domicile, but if you look at the effect of the Scotch marriage, it is not legitimation,' and he rested his view of the case upon that point—the effect of the subsequent marriage is not legitimation *ab initio*, it does not give, as he expressed it, paternity to the father *ab initio*; but looking at various circumstances I have mentioned that have been decided upon in the French Courts, as to the possibility of an intermediate marriage, and all the consequences resulting from it, if you hold it to be legitimation *ab initio*, and paternity *ab initio*, then Lord Brougham says, I conceive the legitimation does not take place till the subsequent marriage, and the legitimation not taking place till the subsequent marriage, unquestionably then the law would touch him at his birth, would seize upon him from the moment of his birth, and up to the time of his marriage; and the law of America, having once fastened upon him, you cannot predicate who is his father—he is an alien from that moment, and being an alien, that character is indelible. That does not necessarily involve the question about the indelibility of bastardy, and for this reason, numerous questions have been said to arise here, and it may well be held that the comity, which one nation extends to another with reference to its law, will not reach

this question of alienage. Each might be interested in the question with regard to whom it shall preserve as its subject and whom it shall admit as its subject, and they may well say, as regards that question of alienage—the question of alienage having once been fixed, that is indelible, and you cannot hold the person to be legitimate in that sense, to all intents and purposes, so as to do away with that indelible character of alienage which has been impressed upon him. The question of the indelibility of bastardy did not come under consideration directly there,—it was scarcely considered at all in the case of *Shedden v. Patrick*, but the question of the indelibility of bastardy was a good deal discussed in the case of *Munro v. Munro*—and in *Munro v. Munro*, there are observations made by Lord Cottenham which are very important as touching this point. He says, in page 873, 7 Clark & Finnelly's Reports, 'If a domiciled Scotchman be in the habit, for business or pleasure, of passing part of his time beyond the border, and some of his children are born within and some without the limits of Scotland, can it be the law that a subsequent marriage should legitimize some only of his children and leave the rest illegitimate? It has been assumed in argument that any of such children born in a country which allowed legitimation *per subsequens matrimonium* would be legitimate in Scotland, but not if born in England, or in any other country which did not recognize such legitimation. This argument is founded upon the supposed indelibility of bastardy, and seems to have its origin in the circumstance of some very learned persons having used expressions applicable to English law upon a question of purely Scotch law.' Then comes this remark—'If English parents have a child [born in another country, could the legitimacy of such child in England be affected by any law of such country? The effect of a Scotch marriage must be judged of with reference to Scotch law, and that law not only does not admit the doctrine of the indelibility of bastardy, but on the contrary, holds that no bastardy is indelible unless the parents were at the time of the birth incapable of marrying. If, therefore, the law of England be imported into the consideration, the effect of the Scotch marriage is judged of, not by the law of Scotland but by the law of England. In this view of the law of Scotland, all the learned Judges of the Court of Session, with the single exception of the Lord President, concurred; and he founded his dissent upon the rule of the law of England as to the indelibility of bastardy and upon expressions of English lawyers. But he adds, in the case of *Rose v. Ross*, 4 Wils. & Sh. 289, 'I stated in my opinion that I would not take the law from such an extreme case, as that of a woman taken suddenly, and perhaps prematurely in labour whilst travelling in England, with or without her paramour, and brought to bed of a bastard there and then; returning with it on her recovery to Scotland. That is an extreme case—and what might be

the law as to it, we must endeavour to settle when the case occurs.' Beyond all doubt a child so born would be affected—this is Lord Cottenham:—'with indelible bastardy in England, and if that is to regulate his *status* in Scotland the peculiar circumstances referred to would not make an exception in his favour.' I think these observations are of extreme importance; they show Lord Cottenham's view to be this:—You are dealing with a domiciled Scotchman, that domiciled Scotchman carries the Scotch law about with him wherever he goes—he carries it with him with regard to all personal contracts, and a domiciled Scotchman having a child born in England, the accident of the place of its birth has nothing to do with the question of domicile or of Scotch law, and he says accordingly,—"If English parents have a child born in another country, could the legitimacy of such child in England be affected by any law of such country?" Now the case that I have before me is literally the same—I have the case here of English parents, because nothing can be founded on the circumstance of the mother being French—I apprehend that a domiciled Englishman, having a child before marriage in any part of the world, or of any woman,—because if it be that a French woman makes a difference the same would be applicable to having a child by a French woman in England as to his having a child by a French woman in France; it is not the place of the birth that operates, I apprehend it is the law of the domicile. I have the case before me of what Lord Cottenham calls an English parent having a child,—can the legitimacy of that child be affected by any law of the country in which that child may happen to be born? Now the importance, as it seems to me of *Conty's* case and of *Munro v. Munro*, is this,—that there does seem to have been floating in the minds of several Judges of very great eminence, a doubt whether the place of birth was not that which determined the status of the child, irrespective of the question of domicile; you trace it in some of the cases before the Courts, particularly in the case referred to by Lord St. Leonards, in that very case of *Munro v. Munro*, in the judgment of the Lord President, who differed from the other Judges, saying,—'I cannot conceive what the domicile of the child has to do with it.' In *Munro v. Munro*, the child was born in England, and whether his father was Turk or Englishman, or whatever he might be, it can make no difference; the domicile of the father can make no difference, he was born there, where a child born out of wedlock is a bastard. That is an error, and that error has long ago been dealt with by the French Courts in *Conty's* case in 1600 and odd, and that was acted upon and adopted and recognised as one fit to govern the decision in that case of *Munro v. Munro*; and Lord Cottenham proceeds on its being a Scotch case in which the whole question arose on a Scotch domicile, and says,—'Can you apply that to the case of an English parent

having a child born in another country? the accident of the birth is not that which regulates the matter, it is the domicile of the parent.' That principle seems to me to have been had in view in Lord Redesdale's observations in the first case of *Shedden v. Patrick*, because in that case he is commenting on the ground which rendered the party a bastard; he assumed the father to be domiciled in England, and he puts this case; he says,—'My Lords, I apprehend that that is the true ground of the decision:' that is *Shedden v. Patrick*. 'He was an alien, and that character could not be altered by the retrospective effect of the law of Scotland, so I apprehend that this child was born illegitimate.' I am citing Lord Redesdale's judgment in the case of the Strathmore Peerage, in 4th Wilson & Shaw, page 94 of the Appendix. He says here,—'So I apprehend that this child was born illegitimate according to the law of the country in which he was born, according to the condition of the mother of whom he was born, and according to the state of his father, who was at the time a person unquestionably domiciled in England.'

He, no doubt, puts all the points together; he says,—everything here occurs, he is born of an English mother, he is born on English land, and his father was unquestionably domiciled in England; and that was the ground of the decision in the Strathmore case. In *Munro v. Munro*, the converse being the case, the circumstance of the place of marriage was considered utterly immaterial, the question of domicile was that which alone regulated the decision of the case.

"Now, you find in Merlin's '*Questions de Droit*,' where this question is discussed, the conflict between the English and French law is fully considered. He gives his view of the state of the law in this manner,—it is in page 171, '*Questions de Droit*,' article '*Legitimation*.' He says,—'First, what would be the condition in France of a natural child born in France of an Englishman and an English woman who afterwards marry in the country, that is, after the birth?' And he says, that is a clear case in which the French Courts would hold him to be illegitimate if they followed up the English law. Then he says,—'What would be the state in France of an infant who might not be born in England but in France;' and he holds it to be equally clear that that child being born of domiciled English parents would be equally held to be an illegitimate child. And the only thing that might have created some degree of doubt, except for this case of *Munro v. Munro*, which really seems to me to settle the question, might be this, that you will find on the question of indelible bastardy several questions,—I purposely avoid going through them because it would be tedious to do so. This sort of distinction is made: it is said that there is a difference between a child being born in a country where bastardy is indelible and being born in a country where bastardy is not indelible. The case I have to consider being born in France he is born in a country where

bastardy is not indelible. But if the law of the domicile is to apply, the circumstance of the child being born of an English parent, it is really identical with the case of an English parent having a child before marriage of a French woman in this country, or of any foreigner in this country, and then attempting afterwards, by subsequent marriage, by becoming domiciled in France, to render the child legitimate. I think on every point of principle, the law of the domicile fastening in this instance on the child, you are driven to this difficulty,—you can only make yourself legitimate by saying you are the child of an Englishman, and you cannot make yourself legitimate in any other way. Then, if you say you are the child of an Englishman, and you are obliged to concede that you were born at a period when that Englishman remained a domiciled Englishman, you concede that you were born before marriage, and you concede that you are illegitimate; and nothing, as it appears to me, after that, can establish a legitimate connection between that Englishman and his child.

"Now, I look at it again with reference to the doctrine of contract which the French themselves hold. The French hold that if there is any obstacle at the time to such a contract as that, namely, a contract by which we engage to marry ourselves hereafter, and we procreate these children with a view of legitimating these children in that way, such a contract could not be entered into between an Englishman and any other party; the Englishman would be obliged to say, 'I cannot enter into any such contract, the offspring I have by you will be illegitimate, it will not be my child, that is, it will not be recognised as my child, the law of my country will not allow it, and the child will not belong to me or to any one; according to the law of my country there is no relation between myself and my offspring.' And that, I apprehend, would be the condition in which a person entering into such an engagement would find himself, and it would be immaterial the fact that she was ignorant of that law, as appears by the case I have already quoted, where the party was ignorant of an obstacle existing in consequence of the person with whom she had connexion being married. So, again, looking to that other case which I referred to, where the Courts will not allow in France a party to be rendered legitimate where it is uncertain who the father is, we find a case where the English law is applicable at the birth, the English law says it is not only uncertain who the father is, but it is impossible ever to attribute any certainty to the father, and the English law says, we cannot ascertain the father. The French law would say, if the father cannot be ascertained the child cannot be legitimate. That is the case where it was said, 'Qu'il y avait un bon part,' as to the procreation of the child.

"It appears to me, therefore, upon that, although the point is new, that it is concluded by the current of authorities especially since

this case of *Menro v. Menro*, which attaches the weight to domicile, and that in that respect alone I ought to hold the child to be illegitimate.

"There are some other circumstances which I will just mention briefly, upon which I have come to an equally clear conclusion, although I have not been much assisted by the French opinions, in which the child is not required to be held to be legitimate in France, for this reason—the code requires that the child shall be recognised by both parents, either at the time of marriage or before, unless it shall have been done at the birth. Now it was said there had been a recognition at the birth, because the father had given in the name of the child and signed his name to it as father; that is not a recognition of it by both parents. It is perfectly clear on the French law that the recognition is required by both parents; and in truth what was done in this case was this—as soon as a recognition was made in 1844, it was what they called *paraphé*, as an act acknowledged by both parents at the side of that act of birth. Now, the act of birth, it appears clearly from Merlin, ought, if you are to rely on that for the legitimization of the child, the recognition of the act of birth ought to be by both. It will be found in page 73 of his *Rapertoire*, he says—"Another question has often been agitated, whether there should be some express act in the margin of the act of birth with reference to the recognition by the parents." He says here—"But it has been unanimously agreed that a new recognition before marriage is not required if the father and mother appear at the act of birth." In this case clearly the father only appeared; there is no appearance of the father and mother; and he says, the appearance of the father and mother would be sufficient, if there is evidence of their having recognised the child: here this is clearly only an act of the father's, and not such a recognition as would legitimize the child,—both must concur or else it must be done at the marriage.

"Now, what took place here? The marriage took place in 1841, at the English embassy. Mr. James says, that is not a valid marriage, he says that the French subjects are not bound by that law; but although this gentleman is domiciled, and I will assume him for the purpose of this argument, to be domiciled in France, still, nevertheless, as the act is general for all British subjects, and the Act of Parliament enables him to marry in the chapel of the British embassy, and gives full validity to the marriage, the Act makes no express reference to his marrying a foreigner or any one else; and I, sitting here, am bound to hold that he was married at that time, and duly married. There may be this question, whether there may be at some future time a conflict of law not to be avoided,—I take it the question of the wife's sister is one of those cases; the Court must always hold, by the Statute, that the wife's sister never can be the lawful wife of the supposed husband, whereas the French and foreign

law recognises her as such. Those are conflicts of law which must occur, and which cannot in any way be avoided. But I apprehend, looking to the fact of this marriage, I cannot say that there having been this marriage, I am obliged here to adopt the recognition of the legitimacy of the child which the French law has thought necessary to superimpose as a condition to avoid the many inconveniences that might result, to hold that that is not a marriage in which the act of the legitimation ought to have been at once recognised, and if not then recognised it would be too late to do so. I have said that I have been but very little assisted by the French opinions. M. Crémieux has assumed throughout the domicile to be English; M. Dutilleul has not assumed, but argued upon it in this way, in which he appears to be clearly wrong: he says that without letters—imperial letters, or something to that effect, the rights of domicile cannot be acquired. Now, three authorities have been cited to the contrary of that; and therefore I have not derived any assistance from the opinion founded on that hypothesis. The opinion of the third gentleman, M. Lacan, is not founded on any decided case, there being no decided case which has held that where a domiciled Englishman procreated a child that child was afterwards legitimated. I will merely mention two or three of the extreme inconveniences that would result from holding the doctrine contended for, such as, if I were obliged to hold that a domiciled Englishman having an illegitimate child could afterwards by becoming a domiciled Frenchman legitimize that child. The consequence would be frightful as regards our English families, because the doctrine must apply to this,—I do not see that it could be confined to his having any illegitimate children, even by a foreign woman or by a French woman in this country, or any other country as far as I can see; if that is to be the law, if he had any number of illegitimate children by any Englishwoman in this country and afterwards domiciled himself in France, he could then, by marriage with that woman in France, make every one of them legitimate,—see what the consequence would be. Now, take the case of this gentleman who makes his will—the grandfather: we hold in our law that when a gift is made to children that can only be made to legitimate children, and no others. The grandfather makes his will under that impression. In this case suppose it did not happen so; he might perfectly well know that his grandson had six or seven illegitimate children, and then suppose he makes his will with a knowledge of that state of circumstances, giving it to his children—his legitimate children being two—to take at his death, and then it turns out by a subsequent act in France, by acquiring domicile, he is then to have the power, by marrying, of rendering the whole of those children legitimate. Another case would be this:—Look at the position of the brothers and sisters, children of the half-blood. You suppose you have a

single sister,—you make no will,—you imagine that you have got only one sister; but shortly before his death your father, having half-a-dozen illegitimate children, domiciles himself in France; all of a sudden are introduced a number of new brothers and sisters, who would take in preference to the person whom you supposed to be your only sister. It would be an extremely strange consequence if you were to say that that was the state of our English law. It might be answered that the same consequences result in France and in Scotland from the existing law, that you may have an additional number of new members introduced in this manner into your family. But the answer to that is, we know that that is the law of the country under which we live; that we know to be so; but why are we to assume that our parent will by a fixed residence in some other country change totally the law as it exists with regard to us; we are the children of an Englishman and we are governed by the English law; we imagine that our family is a family consisting of persons who will be recognised; we know that there are five or six children who never can have the least degree of relationship to us, and as to whom it is impossible that the English law can give relationship, unless indeed our father go over to some other country and there create an entirely new state of facts. It seems to me that such a consequence would be one of an extremely serious character and little suitable to our English jurisprudence; and I fasten strongly on Lord Cottenham's observations in *Munro v. Munro*; he says,—“Can the legitimacy of the children of English parents be affected by the country in which they are born?” It seems to me not: their legitimacy is decided by the *status* of the English parents, and being so decided it is decided once for all. Therefore, I have no hesitation in saying that I ought not to have any further inquiry about the domicile of the marriage, it being made out what was the domicile at the time of the marriage. I do not think I ought to direct an expensive inquiry of this kind, and therefore I must hold that this child is illegitimate. \* \*

“I ought to have noticed Vice-Chancellor Parker's decision. I should have felt great weight due to that decision if it had taken an adverse view to that which I have taken; but upon looking at that case I find it is only the old cases of *Munro v. Munro* and *Conty's case*. There it was the case of an Englishwoman living in France, whether she was domiciled or not does not appear; but she formed a connection with a Frenchman, and then the Frenchman afterwards married her. There she is supposed to have acquired the domicile of her French husband, and the French law says he was her husband, with that species of preliminary contract. Vice-Chancellor Parker did not decide the case upon that, but he expressed his opinion,—I have got a marginal note on one of the briefs in which the Vice-Chancellor expresses his opinion that he should hold that that child was legitimate to all intents

and purposes; and my own view of the case is, it has never been decided in France, but I think that the Courts of France would not hold the child legitimate. I have got a short note on Mr. Smyth's brief for which I am much obliged. The language here is too strong to be got over. Literally speaking, the event did not happen; there was other issue. 'The probable intention cannot be effected. I think the legitimated child was in fact entitled, but the Bill will be dismissed in either event.' The legitimated child was in fact entitled; that was the child of an English mother, but it was clearly a Frenchman who had intercourse with her, and the same Frenchman who married her."

The costs of all parties to come out of the fund.

### Court of Queen's Bench.

*Copeland v. North Eastern Railway Company.*  
April 26; May 3, 1856.

COMPANIES' CLAUSES ACT.—TRANSFER OF SHARES.—VOLUNTARY CONSIDERATION.—REGISTRATION.—MANDAMUS.

Held, that under the 8 & 9 Vict. c. 16, s. 15, a deed of transfer of shares in a railway company, although for the consideration of natural affection, must be delivered to and left with the secretary before he can be compelled to register the same; and s. 18, which requires the transmission of shares by other means than transfer to be authenticated by a declaration without any such delivery, does not apply to the case.

THIS was an action, with a claim of mandamus under the 17 & 18 Vict. c. 125, s. 68, on the above defendants to register the transfer of certain shares in their company, and which had been conveyed (together with other railway shares) by deed to the plaintiff in trust for the settlor for life, and then for the settlor's sister, &c. It appeared that the consideration was stated to be natural affection. The defendants' secretary refused to make the registry unless the deed was delivered to and left with him. The case now came on upon demurrer to the replication.

By the 8 & 9 Vict. c. 16, s. 14, it is enacted, that, "subject to the regulations herein or in the special Act contained, every shareholder may sell and transfer all or any of his shares in the undertaking," "and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated;" and by s. 15, that "the said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in the book to be called the register of transfers, and shall indorse such entry on the deed of transfer."

Section 18 enacts, that "if the interest in any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according

to the provisions of this or the special Act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a master or master extraordinary of the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders."

Sir F. Thesiger and Karlake for the plaintiff; H. Hill for the defendants.

*Cur. ad. vult.*

The Court said, that ss. 14 & 15 applied to all cases of direct transfer *inter vivos* for any consideration whatever, and it was intended that every transfer should be left with the company, and the transferee take on himself the liabilities of the original shareholder. The defendants were therefore entitled to judgment.

### Queen's Bench Practice Court.

(*Coram Coleridge, J.*)

*In re Shoobridge, gent., one, &c.* May 1, 1856.

ATTORNEY.—STRIKING OFF ROLL AT OWN REQUEST.—AFFIDAVIT.

Held, that the affidavit in support of an application by an attorney to have his name struck off the roll at his own request in order to go to the bar, should state that no application against him is apprehended as well as pending.

THIS was a motion for an order, at his own request, to strike Mr. Shoobridge, off the Roll of Attorneys of this Court, in order to his being entered for and called to the Bar.

Hannen in support.

The Court said, that the application must be refused, as although the affidavit in support stated no application was pending, it omitted to go on to say that none was apprehended.<sup>1</sup>

### Court of Exchequer.

*Taylor v. Roberts.* May 7, 1856.

INSOLVENT.—VALUATION AND ENUMERATION IN SCHEDULE OF EXCEPTED ARTICLES.

Held, that the 7 & 8 Vict. c. 96, s. 9, which provides for the separate enumeration and valuation in the schedule of articles claimed to be excepted, is to be construed strictly and literally; and therefore, where an insolvent deposited certain furniture with the defendant before insolvency, and omitted to comply with such requirement, held, that the same passed to his assignees, and that he could not recover possession thereof.

THIS was a motion for a rule nisi for a new trial of this action to recover possession of cer-

<sup>1</sup> See also *Esparte Jones*, 2 Law J., K. B. 151; *Esparte Gray*, 9 Dowl. P. C. 336.

tain household furniture, and to which the defendant pleaded *not possessed*. It appeared on the trial before *Martin, B.*, that the plaintiff soon after he had deposited the goods in question with the defendant, had become insolvent, and had inserted in his schedule as "excepted articles" certain other furniture of the value of 5*l.*, and in another part he stated that certain articles of household furniture belonging to him of the value of 15*l.* had been deposited with the defendant, who claimed a lien thereon, which was disputed, and that such were excepted articles by the Act. The learned baron having held that this was an insufficient description under the 7 & 8 Vict. c. 96, s. 9,<sup>1</sup> and that the goods passed to the assignees, this motion was made.

*Thomas, S. L.*, in support.

The Court said, that the proviso of the Act giving an insolvent a right to retain any of his property as against his creditors as "excepted articles," required a strict and literal construction, and the rule was therefore refused.

*Regina v. Freestone.* May 7, 1856.

VAGRANT ACT.—CONVICTION FOR ILLEGAL GAMING IN RAILWAY CARRIAGE.—PUBLIC PLACE.

*A conviction of a prisoner on an indictment under the 5 Geo. 4, c. 83, s. 4, for playing in a certain open and public place, to wit, in a third-class railway carriage, with cards, at a certain game of chance, was held bad, where it omitted to show that the offence was committed in an open and public place; and the prisoner was discharged on being brought up on habeas corpus.*

It appeared that this prisoner had been convicted on an indictment under the 5 Geo. 4, c. 83, s. 4,<sup>2</sup> for playing in a certain open and public place, to wit, in a third-class carriage used on the Brighton Railway, with cards, at

<sup>1</sup> Which enacts, that "the wearing apparel, bedding, and other necessities of the petitioner and his family, and the working tools and implements of the petitioner not exceeding in the whole the value of 20*l.*, may be excepted by the petitioner in his petition from the operation of the said recited Act and of this Act, and in such case shall be altogether excluded from the operation of the said Acts. Provided always, that such excepted articles, with the values thereof respectively to be ascertained and appraised, if the Commissioner shall think fit, in such manner as he shall direct, be fully and truly described by the petitioner in his schedule, but otherwise the exception thereof shall be of no force as to any part of the same."

<sup>2</sup> Which enacts, that "every person committing any of the offences hereinbefore-mentioned after having been convicted as an idle and disorderly person," &c., "every person playing or betting in any street, road, highway, or other open or general place, at or with any table or instrument of gaming at any game or pretended game of chance."

a certain game of chance called "odd man." This rule *aisi* had been obtained for his discharge, on the ground that the conviction was bad for not alleging that the carriage was a public one, or contained passengers, or was on the public highway.

*Metcalf* now moved for the prisoner's discharge.

The Court said, that, without deciding whether or not playing at cards in a railway carriage was an offence within the Act, the conviction was bad for not showing that the offence was committed in an open and public place, and the prisoner was therefore discharged.

Crown Cases Reserved.

*Regina v. Roebuck.* Nov. 24, 1855; May 3, 1856.

INDICTMENT. — FALSE PRETENCES. — ATTEMPT TO OBTAIN MONEY BY.

*The prisoner went into a pawnbroker's shop and asked an advance of 10*s.* on the chain he produced, and he stated in reply to the question put to him that it was silver. The pawnbroker tested it and lent the money. The prisoner subsequently went to another pawnbroker's with a similar chain and asked a like sum to be lent. He was then searched and a number of similar chains were found on him. On an indictment under the 7 & 8 Geo. 4, c. 29, for fraudulently obtaining 10*s.* by falsely pretending that the chain was silver, well knowing it was not, he was found guilty of an attempt to commit the offence under the 14 & 15 Vict. c. 100, s. 9: The conviction was affirmed.*

THIS was an indictment under the 7 & 8 Geo. 4, c. 29; against the prisoner for fraudulently obtaining 10*s.* by falsely pretending that a certain chain was silver, well knowing it was not so. It appeared on the trial at the Liverpool Borough Sessions that the prisoner had gone into a pawnbroker's shop and asked an advance of 10*s.* on the chain he produced, and that he had stated in reply to the question put to him that the chain was silver. The pawnbroker tested it and afterwards lent the money required. The prisoner afterwards went to another pawnbroker with a similar chain, asking him to lend 10*s.* on it, when he was searched and a number of chains of a like description found on him. The prisoner was convicted under the 14 & 15 Vict. c. 100, s. 9, of an attempt to commit the offence charged in the indictment, and this point was reserved whether the prisoner was guilty of a false pretence.

*Brett* for the prosecution, citing *Regina v. Kenrick*, 5 Q. B. 49; *Regina v. Abbott*, 1 Den. C. C. 273.

*Cur. ad. vult.*

The Court said, that the case was clearly within the Statute, and that the prisoner had been guilty of a false pretence. The conviction was therefore affirmed.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, MAY 31, 1856.

### APPELLATE JURISDICTION OF THE HOUSE OF LORDS.

#### LIFE PEERAGES.

AN eminent lawyer on the Northern Circuit, who took slight interest in public affairs, was pressed much by his ambitious brethren to declare his political opinions. "Was he Tory, Whig, or Radical?" With equal humour and good sense, our learned friend answered, "that he was a Special Pleader." In other words, he had nothing to do with, and cared nothing for, party politics. So the writers in the *Legal Observer* may say:—"We are for the due administration of Justice, and for the due remuneration of those who are engaged in it." We may entertain certain private views of public and professional good; but we eschew political controversy.

It may be supposed, however, that we have not noticed with indifference the contest in the House of Lords on the question of Life Peerages, and the Appellate Jurisdiction in the last resort. Whilst cordially coinciding in opinion with those who maintain the constitutional doctrine of an hereditary peerage, we never participated in the alarm that a few legal peerages for life would seriously affect the constitution of the House of Lords. Apart from the apprehension which some entertained of the "small end of the wedge" being introduced in the shape of a distinguished Law Lord, it was the province of the Legal Journalist to support an improvement—even if it were not sanctioned by precedent—which was calculated materially to strengthen the judicial character of the House of Lords, and remove an objection that on some occasions appeared to be well founded. Moreover, it might be considered that the dignity of the Upper House itself, and its claims on the general respect of the community, would be impaired, if its important func-

tions as a High and Ultimate Court of Appeal should be unsatisfactorily discharged.

It was clearly within the province of the Royal Prerogative to grant Peerages for Life. New ranks of honour have been created in comparatively modern times; and though the power of the Crown may, in this respect, have been long disused, it could not be barred by lapse of time. The reason of its revival appeared just and politic. Amongst other of the numerous projects of Law Reform, it has often been proposed to transfer the Judicial powers of the Lords to a separate tribunal, constituted after the example of the Judicial Committee of the Privy Council. But the House of Lords have again and again determined to hold fast by their ancient jurisdiction.

Statesmen as well as lawyers, and all who desire the administration of justice to be respected in this country, must feel the necessity of rendering this Great Tribunal free from all reasonable objection.

Most of our readers who have had occasion to visit the House of Lords when sitting judicially, must have been struck with the strangeness of seeing the Lord Chancellor sitting alone, either on the woolsack away from the Bar, or recently in a nearer position to the advocates addressing him, and a law lord or two seated on one of the side benches or a lay peer strolling in and out as suited his convenience. In our regular and orderly Courts, where there are a plurality of Judges, they are seated conveniently on the same bench and enabled to communicate with each other. They are devoted to the consideration of the cause before them, and without exception, possess and deserve the respect both of the Profession and the Public. If the House of Lords is to retain its pre-eminent jurisdiction, it is palpable that when sitting judicially it must consist of not less than three or five Judges of great legal distinction, &



determine the important issues of law which come before the House.

We rejoice, therefore, that the Select Committee to whom this subject was referred, have recommended the appointment of two Deputy Speakers chosen from those who have exercised high judicial functions for not less than five years in the Superior Courts; that such Deputy Speakers may be Life Peers only; but that not more than four Life Peerages be created.

We believe that there have been instances in which eminent Judges, deservedly raised to the Peerage, would have preferred that the honour should cease with their lives, because they could not leave wealth sufficient (in this money-loving country) to maintain the dignity of an hereditary Peerage, and at the same time provide for the younger sons and daughters of the family.

We subjoin the Report of the Select Committee, and no doubt it will be speedily carried into effect by a proper legislative measure, and that Lord Wensleydale, and one or more of the other Judges of the Superior Courts of Law or Equity will be raised to the dignity of Lords of Parliament, and regularly take their seats right and left of the Lord Chancellor whenever the House is sitting on appeals.

#### REPORT OF THE SELECT COMMITTEE.

Appointed to inquire whether it is expedient to make any, and, if so, what provision for more effectually securing the efficient exercise of the functions of this House as a Court of Appellate Jurisdiction; and further, how any such provision would affect the general character of this House; and to report their opinion thereupon:—

That the Committee have met, and, in pursuing the important inquiry entrusted to them, have examined several of the leading counsel employed in the business of appeal at your Lordships' Bar, and subsequently the Lord Justice Clerk, the Lord Justice General of Scotland, the Master of the Rolls, Vice-Chancellor Stuart, and Lord St. Leonards.

Among these witnesses there appears to be a very general agreement as to the expediency of retaining the appellate jurisdiction of the House, and in this view the Committee entirely concur.

Although some of the witnesses have stated that the working of the present tribunal is perfectly efficient and satisfactory, and testimony has been generally borne to the wisdom and impartiality with which the law has been administered by it, yet there is a great preponderance of opinion in favour of some change in the manner in which the appellate business of the House of Lords is at present conducted.

The principal objections raised by the witnesses against the present constitution and practice of this ultimate Court of Appeal are as follows:—

1. That none of the Law Lords, except the Lord Chancellor, being bound to attend, there is an uncertainty as to the number of those Peers who may assist at the hearing of any case; and that the attendance of Peers who, from want of professional knowledge and experience, decline to interfere in the proceedings, takes away from the solemnity of the tribunal, and leads to misconception on the part of the public, when their presence is only required in order to make a House.

2. That delay, sometimes inconvenient to the suitors, and prejudicial to the regular administration of justice, is caused by the House not being able to sit during the whole of that portion of the year during which the Inferior Courts are open.

3. That the administration of Scotch law has been at times unsatisfactory from the want of familiarity with the Scotch law, consequent upon the Law Lords being exclusively English Judges.

4. That there is an unnecessary expense attending some of the forms of proceeding.

5. That the mode of delivering judgment, and the absence of official dress, deprive the House of the solemnity which attends ordinary judicial proceedings.

The Committee have carefully considered these objections raised by the witnesses, and also the various suggestions that have been made with a view of meeting them; and they have to submit the following as the conclusions to which they have come:—

1. It appears from the evidence, that for the last 10 or 15 years the appeals have been heard sometimes by as many as four Law Lords, sometimes by three or two, and instances have been adduced where appeals have been heard and decided in this House, with advantage to the law, and satisfaction to the public, by the Lord Chancellor or one Law Lord alone. The Committee are, however, of opinion that, considering the importance of the causes brought to this ultimate Court of Appeal, the House should, as a general rule, be able to reckon on the attendance of not less than three Law Lords to assist in the hearing of all appeals; but in making this recommendation, the Committee by no means wish to discourage the attendance of other Members of the House.

Although during certain periods the number of Law Lords in regular attendance on the appellate business has been adequate to meet the requirements of the public and the profession, experience has proved that such attendance cannot always be relied on. Hitherto, those by whom this duty has been discharged have been for the most part ex-Chancellors. The Committee are of opinion that the attendance

of others equally qualified to sit with those Peers in judgment on the decision of the inferior Courts would be best secured by the creation of other high legal offices, in connexion with the House of Lords, with such salaries as would ensure their acceptance by the most eminent Judges. The Committee are, therefore, of opinion that it is desirable that two offices should be created, to be held by two Law Lords, whose duty it should be to assist the House in the performance of its judicial duties; and they accordingly recommend that her Majesty should be empowered to appoint two Lords to be Deputy Speakers of the House of Lords, with salaries attached to their offices. The Committee do not propose that these appointments should interfere with her Majesty's power to appoint unpaid Deputy Speakers of the House.

As the Lords holding the proposed offices would be entrusted with judicial duties of the highest importance, and as the Committee believe experience to afford the only sure test of the fitness of even eminent lawyers for such duties, they would further recommend, that persons who have held some high judicial office in the United Kingdom for not less than five years should alone be eligible for these appointments.

They recommend that the office of a paid Deputy Speaker of the House shall be held by the same tenure as the office of a Judge, and that every such person shall receive, out of the Consolidated Fund, a yearly salary of 6,000*l.*, or such yearly sum as, with any pension to which he may be entitled for past services, will make up a yearly income of 6,000*l.*, so long as he shall hold the said office.

2. With respect to the delay which now occurs in hearing appeals, from the sittings of the House not being co-extensive with the sittings of the inferior Courts, the Committee advise that the House should be enabled to authorise its sittings to be resumed or continued for the hearing of appeals only at such times as may be deemed expedient for the exercise of the appellate jurisdiction, notwithstanding the prorogation of Parliament.

3. The Committee have paid great attention to the important evidence which they have heard on the subject of the Scotch appeals. Nearly all the witnesses who spoke to this part of the subject admit that very material advantages have been derived by Scotland in the course of the administration of the law by the House of Lords, and some of them are of opinion that it is still advisable to keep the appellate jurisdiction entirely distinct from the Scotch Bench and Bar; but, on the other hand, arguments were urged, with considerable force, against the anomaly of the final Court of Appeal from Scotland being so constituted as never to comprehend a Scotch Judge or any person necessarily acquainted with Scotch law. It appears that the majority of the Bar, and the writers of the signet in Edinburgh, are in

favour of one of the members of this Appellate Court being a Scotch lawyer. It is not proved that this is the opinion either of the mercantile classes, or of the community at large in Scotland. The Committee are of opinion that no fixed and invariable rule should be adopted on this subject.

4. The Committee recommend to the attention of the House the complaints which they have quoted above as to the unnecessary expense of some of the proceedings of the House, particularly in respect to the printing of the cases. They are of opinion that this, together with other suggestions for the prevention of delay, are questions which will be best dealt with by the Lord Chancellor and the Lords who assist him in hearing appeals.

5. The Committee have heard much conflicting evidence as to the best mode of delivering judgments. It is argued on the one hand, that the great principles of law are best elucidated by separate judgments, when the Judges in the Court of Appeal differ in opinion, and that the separate declaration of opinion is satisfactory to the suitors, as proving that great attention has been paid to the cause. On the other hand it is urged, that such divisions diminish the authority of the tribunal of ultimate resort, and tend to produce uncertainty in the law, without any countervailing advantage; and the example of the Judicial Committee, where differences of opinion are not expressed, has been quoted as favourable to the deliberation being in private, and the opinion of the majority given as the collective judgment of the tribunal. The Committee are of opinion that this is a matter of discretion, which must be left to be arranged among those who hear and decide the appeals; but they recommend that those who hear and decide the appeals should have leave to sit at the table, and deliver their opinions sitting.

The attention of the Committee has been drawn to the difficulty which may, in some cases, be felt hereafter, of appointing the most fit persons to judicial offices connected with the House of Lords, if it cannot be done without conferring on them hereditary peerages; and it appears to the Committee advisable, that any person appointed to such an office should be enabled, by authority of Parliament, to sit and vote in the House, and enjoy all the rights and privileges of a peer of Parliament, under a patent conferring a peerage for life only, if the Crown may have granted, or shall grant, the same to such person in preference to an hereditary peerage: provided always, that not more than four persons shall have seats in the House at one time as peers for life.

The Committee recommend that in all respects, excepting those where change has been recommended in this Report, the functions of the Lord Chancellor and the rights and privileges of the whole body of the peers shall remain unaffected.

## MARRIAGE LAW AMENDING BILL.

THIS Bill, which is introduced by Lord Brougham, proposes to enact, that from and after Jan. 1, 1857, no irregular marriage solemnized in Scotland or any other part of the United Kingdom shall be valid, unless both parties were born in Scotland, or had had their most usual place of residence there, or had lived in Scotland for three weeks next preceding such marriage; s. 1.

If any persons married in Scotland shall prove to the satisfaction of the sheriff or sheriff substitute that they have been married, and had lived in Scotland for three weeks next preceding such marriage, such sheriff or sheriff substitute shall certify the same and grant warrant to the registrar, who shall enter such marriage in the register under the 17 & 18 Vict. c. 80; and a certified copy of such entry signed by the registrar (for which 5s. may be charged) shall be received in evidence of such marriage and such residence; s. 2.

Persons forging such entry in the register, or the signature of the sheriff or sheriff substitute to any warrant or certificate, shall be liable to transportation; s. 3.

## LEGAL EDUCATION.

## REDUCTION OF STAMP DUTY AND INCREASE OF QUALIFICATION.

*To the Editor of the Legal Observer.*

SIR,—Your correspondent L. (at p. 51) appears to have somewhat mistaken my views with reference to this subject; especially when he assumes that it is desired to multiply the members of the Profession, and inundate it with an inferior class, or lower order of attorneys. He has not given any good grounds: nor do I consider he has shown sufficient reason why the stamp on articles should not be reduced.

The practical working of the alterations would be somewhat as follows:—A youth in early life entering a solicitor's office, his ardent ambition would make his future prospects boundless—there is no barrier to obstruct at the commencement, and nothing but energy and perseverance requisite to ensure ultimate success. And though he may never realise the full measure of success, yet any approximation to the amount of legal knowledge required would not be without its reward. He would not enter into articles forthwith, but steadily apply himself to the study of the law, and other branches of learning necessary to qualify him for the examination. Seven years might elapse before he ventures to enter into articles which would terminate his legal education. The result in the majority of instances would probably be, that he would abandon his project, entertain more sober views of the future, and content himself with the position of a useful and intelligent clerk. And would not this be far better

for principal and clerk, than being, from first to last, an actual copying machine?

What inducement is there at present for a junior clerk to apply himself to the study of the law?—a dry and tedious study it must be admitted. It is true there may be members of the Profession ready to further the efforts of their deserving clerks, and there may be instances of its having been actually done;—but it is the exception and not the rule.

A clerk displaying transcendent abilities, notwithstanding his humble circumstances, may be made an object of professional patronage: but why should mediocrity be utterly excluded? or long and unremitted application go unrewarded? And is it fair and proper that it should be left to the option of the principal, and made dependent on his generosity—is the clerk to be left to the chance of his being able and willing to promote his advancement?

The medical profession, merchants, and manufacturers, find no inconvenience from their position being accessible to their subordinates, and there is no reason why the Law should form an exception. The alterations suggested, so far from increasing the number of the Profession, would, I humbly submit, have a directly contrary effect. From the very nature of a profession, a person entering one must be in a pecuniary position to maintain himself for some years, while slowly and by degrees he gains experience, and can command the confidence of a large number of clients. Serving articles and passing an examination are merely matters of legal education; and although they may then enter their names upon the Roll, it depends entirely on their position and connexions whether they practise, either on their own account, or by purchasing a partnership in an existing firm. And some articulated clerks, aided by wealth and influence, being unsuccessful, cannot be adduced as an argument for others spending the prime of life in penury, and perhaps their old age in poverty.

The evil complained of is,—not that they may by chance fail, but that they have none but the remotest chance of ever succeeding. Solicitors owing their position to the removal of the pecuniary barrier at the commencement of their career might, perhaps, hereafter be found in the ranks of the Profession, if the regulations were altered; but it is not with a view of introducing on the Roll a lower class of attorneys, or even to add to the number of those practitioners who are little better than brokers. The object is to promote the pursuit of legal knowledge, and render clerks in general more efficient, by affording an inducement to engage in studies in which, if they prove pre-eminently successful, will ensure them ample reward. Articled clerks who are not in a position to practise for themselves, now act as superior clerks in large firms,—places that more properly might belong to ordinary clerks. And though perhaps entered on the Roll, and in the possession of a perfect right to practise as principals, many find it more to their advantage thus to fill the places of subordinates; and such would

doubtless be the general position of clerks articulated and examined under the proposed regulations.

Your correspondent's character of Law clerks in general, is far too favourable to be borne out by existing circumstances. They have, alas! a reputation the very reverse in all particulars to what he has attributed to them. So far from being *religious*, they are commonly said to be immoral; their society very objectionable,—and as a consequence, to the young,—their avocation demoralizing. There may be none such in the chambers of L.: exceptions may exist, but in the majority of instances they are not remarkable either for their industry or their respectability;—if he has found them otherwise, he has been more fortunate than the generality of the Profession. It must necessarily be an inferior order of clerks who will consign themselves to hopeless drudgery in a lawyer's office. It is generally the last resort, and not a matter of choice. Those who have had a little more education than mere writing go elsewhere, with a view to their future advancement, being allured by opportunities which the law can never afford. Clerks in the law now appear to have sunk into a state of apathetic indifference, as if under the feeling that whether they have ability or not, they are without the means of raising their position, so long as the present system exists;—while "money makes the man, and the want of it the fellow."

Every instance of advancing ordinary clerks to the position of those who have been regularly articulated—who have defrayed the expenses themselves, and served five years without salary and perhaps paid a premium—is certainly an injustice. An injustice that would be remedied in a great measure, were the intellectual qualifications the *sine qua non* in advancement. It would evidently be unjust to make any considerable alterations in the examination of those already under articles, notwithstanding the necessity of higher attainments, is now so loudly called for. Yet it would be only equitable that those who may hereafter enter into articles, when given to understand that they will have to pass a more rigorous examination than has hitherto been required, should have a compensation for the additional demand on their time and energies.

Under all circumstances, therefore, I still consider that the alterations proposed would be beneficial to all parties interested,—to the Profession and to the Public, to clerks whether articulated or not. Those who did not choose to avail themselves of the opportunities it would offer—and they would probably be the majority—preferring to continue simply fulfilling a routine of mechanical duties, would not be prejudiced by it:—those who applied themselves to study law under its auspices, albeit, far from being created principals thereby, would elevate their position in society and in the Profession; and so far from injuring the Profession, it would probably derive the chief advantage from it, by inducing a superior class of young men to en-

ter solicitor's offices; by promoting the pursuits of legal learning; and by providing them with clerks possessing efficient legal attainments.

B.

## COMPULSORY COPYHOLD ENFRANCHISEMENT.

### OBJECTIONABLE VALUATION.—COSTS OF LORD OF MANOR.

To the Editor of the Legal Observer.

SIR,—As the various Acts of Parliament passed during the present reign for facilitating the enfranchisement of copyhold lands affect the rights of an immense number of persons, interested either as lords or tenants in the innumerable copyholds scattered throughout the entire kingdom, I beg to avail myself of your columns for the purpose of bringing under the notice of the Legal Profession and the Public a case of extreme hardship, which has recently occurred upon a compulsory enfranchisement under the last of those Acts,—the 15 & 16 Vict. c. 51. I am the rather induced to take this course, as the proceedings under this Statute being hitherto comparatively few in number, and those yet to come being likely to be gradual in their progress and of long continuance, if any fitting remedy, parliamentary or otherwise, can be devised to meet the case, a large amount of palpable injustice may yet be prevented.

The case is simply this:—Nearly two years ago, one of the copyhold tenants of a manor situate within a few miles of London, having retracted an offer he had previously made and which had been actually accepted by the lord of the manor as a compensation for the loss of his manorial rights, gave notice to the lord, under the second section of the Act referred to, of his desire to enfranchise his copyhold, and each party appointed a valuer, under the same section, to act on his behalf in fixing the consideration to be paid to the lord for such enfranchisement. The two valuers not being able to agree upon an umpire, within the time prescribed by the Act, the copyhold Commissioners, in exercise of the power conferred upon them for that purpose, appointed a gentleman to act as umpire, on whom the duty of fixing the amount of consideration thus devolved.

By the 30th section of the Act it is provided, that "the expenses of any proceedings for effecting any enfranchisement under this Act, and all expenses which in the judgment of the Commissioners may be *incidental thereto*, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise, shall be borne by the party, whether lord or tenant, who shall have required the enfranchisement; but no costs or expenses shall be due or recovered from any person until the same shall have been certified, under the hands and seal of the Commissioners or of an Assistant Commissioner, to have been *reasonably and properly incurred*: and in case any

dispute or difference shall arise as to the amount of such expenses, the certificate of the Commissioners or Assistant Commissioner shall be final."

The solicitors of the lord of the manor, therefore, proceeded, under the authority (as they reasonably conceived) of this clause, to prepare and provide the proper evidence, documentary and oral, both for proof of the lord's title and as to the value of his manorial rights, very much in the same way as they would have proceeded on behalf of their client in the case of a compulsory alienation of land under a Railway Act. At the proper time they produced their documents and writings before the umpire, and the evidence was partially given, but the valuer seemed in a great measure to act upon the principle that he was the *sole Judge* of the value—irrespective of the judgment and opinion of others, and in fact declining to receive evidence that the land being contiguous to a large public building recently erected, at a cost of some 20,000*l.* or 30,000*l.*, was well adapted for building purposes. Indeed, I have consulted an eminent architect and surveyor, well acquainted with the locality, who considers that there would be no difficulty in letting the land for the erection of villas at a ground-rent of 3*s.* 6*d.* to 4*s.* per foot.

A respectable builder, a man of property and substance, was tendered as a witness to prove that he was ready to take 10 acres of the ground for building purposes, at 10*l.* per acre, but the umpire intimated that that sort of evidence would have no weight with him, and it was not in consequence pressed. The fine taken by the lord of the manor on the recent admission of the tenant, did not exceed 20*s.* per acre.

It may not be unimportant to observe that the surveyor who appeared before the umpire on behalf of the copyholder, actually produced and examined his witnesses in support of the copyholder's case, without any previous notice to the lord of the manor or the steward.

The result, however, of the investigation was, that the umpire awarded to the lord a sum considerably more than double the amount originally offered by the tenant.

When the bill or rather bills of costs of the lord's solicitors (for there were two separate transactions and two distinct enfranchisements) were made out and laid before the Copyhold Commissioners, they referred them for consideration to their own official solicitor. This gentleman's report was adverse to the allowance of any costs whatever to the lord's solicitors, except only such of them as might afterwards be brought in under the 19th section of the Act by the senior partner in his capacity of steward of the manor. But they being very naturally dissatisfied with this report, with a copy of which they were furnished, and which, if carried out by the Commissioners, would entail an actual loss upon the lord as the result of this enfranchisement, laid a case, with a copy of the report and of their bills of costs before two eminent counsel, one

formerly Solicitor-General, and the other since advanced to the Bench; and these gentlemen gave it as their joint and decided opinion, that the principle laid down in the report of the Commissioner's solicitor, was totally incorrect, and that "the lord was entitled under the 30th section to be paid by the tenant the amount of the bills of costs tendered and the charges of the witnesses adduced, independently of the amount to be received by the steward under the 19th section;" and that "the Commissioners ought not to adopt the principle expressed in the report, which would in effect deprive the lord of costs, however reasonably incurred." A copy of the opinion was laid before the Commissioners, but they unfortunately preferred that of their own solicitor, and refused to allow to the lord his solicitor's costs. Those only which were charged by the umpire were ordered to be paid, as a matter of course, by the tenant, the party who had moved and compelled the enfranchisement and all the proceedings arising out of it.

Such being the facts of the case, if the Commissioner's decision be correct, it seems quite clear, as there is no appeal from it, that the further interposition of the legislature would be urgently necessary. But that it is not correct may be satisfactorily shown both from the obvious and natural interpretation of the Act itself, from the force and bearing of analogous circumstances in similar cases of compulsory alienation, and from the difficulties and inconsistencies to which such an interpretation would necessarily lead. Amongst other evils it would lead to the appointment by every copyhold tenant demanding enfranchisement, of a valuer, who would pertinaciously refuse to concur with the lord's valuer in the appointment of an umpire,—a refusal which would not only deprive the two valuers of all power to act, but would throw the appointment of the umpire, with full authority to act in their stead, upon the Copyhold Commissioners. Had the two valuers acted in the present case, the one appointed by the lord would, as a matter of course, have called forward the lord's witnesses, and would have fully investigated his other evidence both as to title and value, of which the lord would thus have had the benefit, and the tenant (subject of course to the common taxation) would have had to defray the expense. As it is, the case is inverted. The lord, on whom (be it always remembered) the enfranchisement is not voluntary but *compulsory*, will have to pay his solicitors for making out and preparing that case and that evidence, of which, for want of a valuer of his own to act for him, he was not allowed only very partially to avail himself. The consequence of this flagrant injustice, if it is allowed to go unredressed, will necessarily be, that the lord must either leave his rights and interests totally undefended, and take in compensation for them whatever he may chance to get, or he must submit to be mulcted in the costs incurred in attempting to defend them, with the further certainty that the case and evidence, which have been pre-

port of the present claim to this extent, that if the case were simply one in which defendants had been called as witnesses on the part of the relators, and in which it had proved on that account impossible to obtain a decree, it would not have been a case of *crassa negligentia*. Looking to the Stat. 6 & 7 Vict. c. 85, and to the opinions which have been expressed on that Statute (although I do not intimate the slightest doubt in my own mind as to the interpretation to be put upon the Statute, and even if it had been relied upon in the argument before Vice-Chancellor Knight Bruce, I think the great probability is that his decision would not have been different from what it was), and looking to the doubt expressed by Lord Truro, besides what might have been urged on the authority of *Elkington v. Holland*, 9 M. & W. 659, and *Purves v. Landell*, 12 C. & F. 91, it would have been impossible in such a case as I have supposed to hold that there had been on the part of the solicitor such *crassa negligentia* as would disentitle him to sue.

"But the foundation of the argument in the case supposed is, that the solicitor acted *bond fide*, and used ordinary diligence and ordinary skill, and that so acting and using such diligence and skill, he was misled, and misled simply on a doubtful point of law, into taking a step which ultimately proved ruinous to his clients. Now this case is wholly different from the case supposed; Mr. Pugh has not been misled by anything of the kind. It is impossible, consistently with the facts in evidence, to hold that he had in the least considered the point of law with a view to examining the defendants Gowland and Lee-Warner as witnesses on the part of the relators. He had taken Mr. Wray's opinion whether they could be examined as witnesses on the part of their co-defendant Dew, and Mr. Wray had given his opinion that they could. Having taken that opinion, Mr. Pugh was attending where the witnesses were to be examined, and one of the relators suggested that it was desirable for him to examine the defendants Gowland and Lee-Warner, in order to elicit the truth. I am putting it most favourably now for Mr. Pugh. I will suppose that the relators said to him, 'it is desirable to examine these witnesses, for we have had a conversation with them, and they are able to state some very important matters in our favour.' It is immaterial whether his clients said 'examine or cross-examine,' because the client is not supposed to know anything of such technicalities; but the solicitor was, no doubt, well aware of the right course. Having favourable witnesses produced by the other side, the right course was to cross-examine them, and that was the course he intended to take.

"It was argued that cross-examination would have been open to the difficulty, that, if the examination in chief was not read, then the benefit of the supposed favourable evidence might be lost to the relators, because, the examination in chief not being read, the cross-examination could not be read either. That is

true, and I should be quite willing to accede to the argument if it were consistent with the facts before me; but the fact is, that Mr. Pugh did think fit to cross-examine, he thought it best to do so, and throughout his affidavit he says fairly enough that such was his object. [His Honour read the affidavit to show this.] It is true that at the close of his affidavit he says,—"I also considered that their evidence was material on behalf of the informant, as the prayer of the information against them was for their dismissal from the trusteeship of the charity; and I considered myself justified in the course I pursued from having perused the Statute 6 & 7 Vict. c. 85, and *Daniell's Chancery Practice* by *Headlam*, and also from having received the opinion of our counsel Mr. Wray." But it cannot be argued from that passage that he considered he was justified in examining in chief, because the whole of the affidavit shows that he intended to cross-examine, and to cross-examine only.

"The opinion that Mr. Wray gave cannot justify the solicitor in the course he took, for Mr. Wray, whether correctly or not, advised him not to cross-examine, because cross-examination would give weight to the examination of the witnesses in chief on the part of their co-defendant Dew, and possibly preclude the relators from objecting to their testimony on the ground of their being interested witnesses. It is impossible for Mr. Pugh to rely on that opinion as justifying either his examination of the witnesses in chief, or his intention to cross-examine them. And by this blunder, which really seems to be a blunder of the most gross description, instead of putting cross-interrogatories, interrogatories in chief are exhibited, and the witnesses are made witnesses in chief instead of being examined on cross-interrogatories.

"It was argued that the view I take is an adherence to the letter and not to the substance. It seems to me to be the substance itself. The solicitor has taken a course which has led to the whole difficulty. He cannot say, 'It was a moot point whether by examining in chief I should or should not prevent a decree being taken against the defendants, and it being a moot point I ought not to be liable.' Had he cross-examined, that moot point never would have arisen; there would never have been any question of a doubtful character at all; he would have had a plain straightforward case; would have got all the benefit of the examination, and no question of this kind would have arisen. He by his negligence has caused it to arise. He by his negligence has brought his clients up to a doubtful point of law which never need have arisen, and that doubtful point has proved fatal to their cause.

"The fact of a solicitor by his negligence placing his client in a difficulty of this description, is that which the Court is bound to call *crassa negligentia*—the circumstance of his putting an examination in chief instead of a cross-examination is *crassa negligentia*. The terms used by *Park, B.*, in *Elkington v. Hol-*

land,' are these—"The solicitor has not infringed any plain rule of law or point of practice." Here the solicitor has infringed a plain point of practice, in putting in interrogatories in chief instead of cross-interrogatories. In *Purves v. Landell*,<sup>1</sup> Lord Lyndhurst, C., admits that where an attorney has shown a 'want of reasonable skill,' he is liable in an action for negligence; and in this very case of *Attorney-General v. Dew*, as reported by De Gex & Smale, the learned Judge says, 'I cannot but attribute to error and want of knowledge, and to no design or intention of abandoning the case against Mr. Gowland or Mr. Lee-Warner, that they were examined, as they were, in chief in support of the information, in support of which they might have been, as Mr. Dew's witnesses, cross-examined.'<sup>2</sup> The case is the same as if it had happened at law, where there can be no doubt the solicitor would have been responsible.

"That is the effect here: and although one may greatly regret it as regards the position of the solicitor, still it is a case of hardship on both sides; and where the hardship must fall one way or the other, the question is, whether it ought not to fall on the party who has been guilty of negligence.

"With regard to the remaining question, whether the whole, or only a part, of the bill is to be disallowed, I have examined the authorities, and I find they establish, that where, as here, a solicitor has been retained for and has undertaken a particular business, his bill of costs for carrying that business through to its conclusion is but one bill; and where, as here, the business in question is the prosecution of a suit, and the solicitor has by his *crassa negligentia* in the conduct of that suit caused the suit to be lost, he cannot recover any portion of his bill. I refer to the class of authorities of which one of the latest is *Whitehead v. Lord*,<sup>3</sup> and which decide that a solicitor cannot bring his action for a bill of costs until the whole of the business is done, except in a case where there has been a stipulation, that, until the client furnishes him with money, he cannot go on with his case. A solicitor has but one retainer—it is all one work and one business that he undertakes to carry through; and here it is in relation to that one business that Mr. Pugh has failed." *Stokes v. Trumper*, 2 Kay & J. 232.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

April 16th, 1856.

*State of the Association.*—The committee commence this report, according to custom, by recording the state and prospects of the

Association, and its operation in relation to the Profession. They are happy to be able to report the following important additions to their own list:—In London, Mr. W. H. Trinder, of the firm of Trinder & Eyre; Mr. C. M. Clabon, of the firm of Fearon and Clabon; and Mr. A. Hemsley, of the Albany; and in the Provinces, Sir William Foster, Bart., of Norwich; Mr. A. S. Field, of Leamington; Mr. H. S. Wabrough of Bristol; Mr. J. Stallard and Mr. C. Pidcock, of Worcester; Mr. T. Nicks, of Warwick; Mr. W. Radcliffe, of Liverpool; Mr. T. Scriven, of Northampton; and Mr. J. W. Danby, of Lincoln.

*Secretariat.*—At the last annual meeting, on the motion of Mr. Shaw of Leeds, seconded by Mr. Field, of London, it was resolved:—

"That it be referred to the managing committee to inquire into, and specially report upon, the causes that have prevented the results of the Society from being commensurate with the importance of the subjects with which it deals, and to suggest the best remedy for such causes, with power to associate with themselves any other members of the Association for the purposes of such inquiry and report."

The managing committee accordingly met specially on the 19th of April, 1855, to take the above reference into consideration, and they then agreed upon the following Report:—

"The Committee proceeded to make inquiry into the causes that have prevented the results of the Society from being commensurate with the importance of the subjects with which it deals, and to consider the remedy which might, or could be, applied, but it appearing to the Committee that whilst some of these causes, as well as their remedy, were stated in the annual report, another and a principal cause will be sufficiently indicated by the remedy which they have agreed to suggest, they do not consider it necessary to report further on such causes, especially as they think it expedient, under present circumstances, that an experimental arrangement should be made in the department of the secretary.

"The Committee are of opinion that there should be more force in the secretary's department, and that it should be remodelled.

"That it is material to the interests of the society to have the services of a secretary without any other occupation, but that the present annual income of the Society will not enable it to do so.

"That the Society has at present a balance in hand arising out of the first year's income.

"The committee recommend that the payment by a per-centage should be discontinued.

"That Mr. Shaen be continued secretary at a salary of 110*l.* per annum, in lieu of per centage, the committee having ascertained that sum to be about the average amount of the per centage received by him.

"That Mr. Shaen continue to have the same advantages as to offices and clerk as at present, he providing a separate room for the exclusive use of an assistant secretary.

<sup>1</sup> 9 M. & W. 661.

<sup>2</sup> 12 Cl. & F. 107.

<sup>3</sup> 3 De G. & S. 495, 496.

<sup>4</sup> 7 Exch. 691.

"That an assistant secretary be engaged at a salary of 200*l.* per annum, who shall devote his whole time and attention to the business of the association.

"That this arrangement take effect from the date of the engagement of the assistant secretary, and be for one year from that date, when the whole arrangement should be subject to revision, and that steps be taken for immediately carrying the same into execution."

This report was received and adopted on the 9th of May, and a sub-committee was on the same day appointed to carry out the recommendations therein contained.

The committee followed the course which had been adopted on the appointment of the secretary on the formation of the society, and inserted an advertisement in the "*Times*," the "*Legal Observer*," the "*Law Times*," and the "*Jurist*," inviting candidates for the office of assistant secretary to send in applications, accompanied by testimonials and references, by a day named.

The committee received applications from 25 candidates, and had personal interviews with six of those gentlemen on the 20th June last, after which they unanimously resolved to appoint Mr. Eden Kaye Greville to the office.

That gentleman entered upon his duties on the 24th of June following, and the advantage of having his undivided services has been very evident in the working of the association during the past year.

Resolutions were also adopted at the last annual meeting (in accordance with a suggestion made by Mr. Ryland at the aggregate meeting held at Leeds in October, 1854), that the provincial meetings should in future be annual, and should comprise the reading and discussion of papers, previously prepared, on professional subjects, and that the next meeting should take place at Birmingham, in the October following.

#### *Annual provincial meeting held at Birmingham.*

—The meeting was accordingly held on the 22nd and 23rd of October, 1855, at the Theatre of the Birmingham and Midland Institute, and the attendance was numerous and influential. The deputation from London consisted of Mr. T. H. Bower, the chairman of the committee; Mr. W. S. Cookson, the deputy chairman; Mr. E. F. Burton, Mr. E. Benham, the Secretary, and Assistant Secretary. The Law Societies of Birmingham, Bristol, Gloucestershire, Leeds, Lincolnshire, Liverpool, Manchester, Worcestershire, and Yorkshire, sent delegates to the meeting; and the following towns were also represented:—Derby, Coventry, Stoke-upon-Trent, Lichfield, Oldham, Hanley, Warwick, Lincoln, Oxford, Wolverhampton, Pershore, Horncastle, and Tattenhall.

After an address from the chairman (Mr. T. H. Bower), it was resolved on the motion of Mr. Street, of Manchester; seconded by Mr. Banner, of Liverpool, that the provincial meeting in the ensuing year should be held at Manchester; the mover promising the members a hospitable reception, and the seconder

expressing a hope that Liverpool would be the next place visited.

The following papers were then read:—

1. On the Means of Elevating and Improving the Profession, and increasing its usefulness. By W. Strickland Cookson, Esq., London.

2. Upon the present state of the Legal Profession in England. By J. Bulmer, Esq., Leeds.

3. On the Organization of the Profession as it ought to be, and as it is. By W. Shaen, Esq., secretary.

4. Defects in the Law of Debtor and Creditor practically considered, in order to their Legislative Amendments. By M. D. Lowndes, Esq., Liverpool.

5. Some Suggestions connected with the Consolidation of the Statutes. By A. Ryland, Esq., Birmingham.

7. On Conditions of Sale. By R. Caparn, Esq., Holbeach.

8. Suggestions as to the Amendments of the Law. By S. Shaen, Esq., London.

Upon these papers much interesting and useful discussion took place.

At the close of the meeting on the 22nd of October, about 40 of the members dined together at Dee's Hotel. They re-assembled on the morning of the 23rd, when the reading and discussion of papers was continued. At the conclusion, the following resolutions were unanimously adopted:—

1. Moved by Mr. J. H. Shaw, of Leeds; seconded by Mr. Rawlins, of Birmingham.—That the papers read at the meeting should be printed and circulated among the members of the Association.

2. Moved by Mr. Benham, of London, and seconded by Mr. Banner of Liverpool.—That the thanks of the meeting be given to the Birmingham and Midland Institute for the use of their theatre and rooms, and to Mr. Ryland for having obtained the same.

3. Moved by Mr. Ryland, of Birmingham, and seconded by Mr. Lowndes, of Liverpool.—That the thanks of the meeting be given to Mr. T. H. Bower, for his able conduct in the chair.

The committee believe that this meeting was felt to be both interesting and useful; and they trust, that the provincial meetings will, from this time forward, be better and better supported by the Profession. They have already had the promise of a paper for the meeting to be held at Manchester next October.

*Local meetings.*—In addition to the meeting at Birmingham, the secretary and assistant-secretary attended local meetings during the vacation, at Bristol, Gloucester, Worcester, and Warwick; and they also visited and canvassed Oxford, Cheltenham, Kidderminster, Stourbridge, and Leamington. The result of the tour was satisfactory. The Bristol Law Society has increased its subscription from 10*l.* 10*s.* to 21*l.*, and many new members were obtained, but the difficulty of awakening the Profession in many parts of the country, to the necessity of united action, is still greatly to be deplored.

*Circular No. 6.*—The committee have print-



ed, and circulated among the members, a circular on the subject of Equity Costs, which will be more fully noticed below. This circular the secretary in his tour found to be highly appreciated by the Profession, and it was widely distributed by him. In the metropolis, also, 1,500 copies have been circulated among the Profession.

*Circular No. 7.*—The committee have, as heretofore in the long vacation, printed and circulated among the members a circular containing an epitome of the legislation for the year.

*Circular No. 8.*—In accordance with the resolution passed at the annual provincial meeting at Birmingham, the Committee have printed and circulated among the members a circular containing the proceedings at the meeting at Birmingham, the papers that were read, and the discussions that took place upon them; and this circular the Committee believe has given great satisfaction. It has been extensively circulated beyond the members of the Association, copies having been sent to the Lord Chancellor, Lord St. Leonard's Lord Lyndhurst, Lord Brougham; to all the Judges of the Chancery, Common Law, and Ecclesiastical Courts; the members of the Judicial Committee of the Privy Council; to all the Officers of the Courts of Common Law and Equity; the Incorporated Law Society; the Law Amendment Society; the Committee for the Amendment of the Law of Debtor and Creditor; and the several Legal Periodicals.

*Chancery costs.*—The Committee, before turning to their labours in respect to the Law and its administration, have to draw the attention of the members to the steps which they have taken for the purpose of obtaining a new scale of costs in Equity, in lieu of the present most inadequate one.

So long ago as the 19th of April last, one of the Committee had an interview with the Lord Chancellor on this subject, which was most fully entered into. The Committee then prepared a paper on the subject, and again communicated with the Lord Chancellor.

The representations of your Committee and of the Council of the Incorporated Law Society, with whom your Committee were acting in concert, induced the Lord Chancellor to inquire into the matter. His lordship appointed Lord Justice Turner, Vice-Chancellor Wood, Mr. Follett, and Mr. Walton, as Commissioners, to investigate the subject, and report the result to him. Those gentlemen entered upon their labours in the month of July last, which they commenced by issuing a circular letter, dated the 7th July, to the Law Societies throughout England, and to various individual members of the Profession, inviting observations and communications. To this letter the Committee sent a reply, dated the 29th July, 1855, which will be found *in extenso* in Circular No. 6, p. 10. Several members of the Committee were requested to attend before the Commissioners, and to enable them to come fully prepared, two members of the Committee made most careful calculations of the receipts and

profit on Chancery business during three years. (See Appendix to Circular, No. 6.) The members of the Committee above alluded to had the advantage of several interviews with the Commissioners, and succeeded in satisfying them that the Profession had sustained a loss of from 30 to 40 per cent. since the passing of the Act of 1852, abolishing the Masters in Chancery. At the suggestion of the Commissioners, the Committee prepared and sent in a revised table of fees, carefully adjusted so as to correct the admitted evil.

The Committee hoped to have been able to congratulate the members on the issue of the New Scale of Costs in Michaelmas Term last; but they have been disappointed. They have not ceased, however, to press the question, and have urged that the new scale, when issued, should be retrospective, so as to make up, to some extent, the severe loss the Profession has sustained. It lately transpired that the Commissioners had communicated with six members of the Profession, and handed them a draft Scale of Fees, for their opinion and observation, upon the condition that they would not show them to, or consult with, any one, not even with each other. The Committee felt that this was not, in fact, any consultation of the Profession at all, and they therefore wrote to the Lord Chancellor, requesting that the orders regulating the fees may be laid before the Committee, for consideration and observation, before they are signed. To this letter a reply has been received, stating that the request made by the Committee is under the consideration of his lordship. Meanwhile, the delay is inflicting upon the Profession a serious daily loss, which making the orders retrospective will only partially repair.

*Rota.*—The Committee have also to draw the attention of the members to an intention which was recently entertained by the authorities of extending the principle of rota to filing bills and claims before the several Judges in Equity. The orders to effect this change were in draft, when it accidentally came to the knowledge of the Committee, who immediately memorialized the Lord Chancellor against the intended alteration. They also drew up reasons against it, pointing out the injustice of depriving the suitor of the power of selecting the Judge and counsel most suited to his case, and demonstrating, that instead of effecting the desired object; viz., to equalise the amount of business in the various Courts; the proposed alteration would actually increase the evil, and render a much larger number of transfers necessary. These reasons were printed, and copies sent to all the Equity Judges and all the Queen's Counsel. The Committee believe that their exertions were successful, for nothing further has been done in the matter. The Committee took that opportunity of pointing out to the Lord Chancellor the mischiefs that might ensue from such orders being promulgated without first consulting the Solicitors, who are the best judges of the practical working of them.

**Chancery.**—A Bill was brought into the House of Lords by the Lord Chancellor on the 13th March, 1855, for the more speedy despatch of business in the Court of Chancery, containing a clause prohibiting London Commissioners from administering oaths in Chancery, except at their own offices. This the Committee considered very uncalled for, and likely to create great inconvenience. They therefore, when the Bill was sent to the Commons, presented a petition praying that the Bill might be amended by omitting this clause. They also communicated with several members of the House on the subject; and eventually, on the 14th August, the Bill was passed without the objectionable clause.

**Friendly Societies.**—The Friendly Societies Bill, which was introduced last Session, also called for the notice of the Association. It was a Bill to consolidate and amend the Acts relating to Friendly Societies; and it commenced by repealing all previous Acts relating to Friendly Societies. This had the effect of leaving building societies subject to a number of laws which were entirely repealed, except in so far as they were incorporated in the 6 & 7 Wm. 4, c. 32, by the 4th section of which it is enacted that the provisions of the Friendly Societies Acts, 10 Geo. 4, c. 56; and 4 & 5 Wm. 4, c. 40, should, as far as they were applicable, be extended to that Act. The Committee pointed this out to Lord Portman, who had the carriage of the Bill in the House of Lords, and his lordship stated, in reply, that a special Act to regulate building societies must soon be passed, and that the House would not consent to introduce amendments with reference to them into the present Bill. The Act was accordingly passed on the 23rd of July, without providing for building societies, which therefore remain in the unsatisfactory position above described.

**Leases and Sales of Settled Estates.**—The Leases and Sales of Settled Estates Bill was presented by the Lord Chancellor on the 11th of May. The object of the Bill was a good one; viz., to enable parties to obtain from the Court of Chancery the powers to deal with settled estates, for which they were now compelled to obtain a private Act of Parliament. The Bill prescribed various ways in which the moneys realised by a sale might be applied, but did not extend to investing them in consols. Neither did the Bill provide for public notice being given of any intended application to the Court of Chancery under the Act, nor for any other persons but those directly interested in the property being heard in the Court of Chancery. The Bill also did not preclude those who had failed in an application to Parliament, from renewing their attempt in the Court of Chancery.

The Committee accordingly petitioned the House to have these points provided for, instancing, as to the latter point, the Hampstead Estate Bill, which Sir Thomas Wilson had not been able to pass through Parliament, but to obtain the object of which he would, neverthe-

less, if this Bill passed, be able to make an application to the Court of Chancery.

The Committee had several interviews with the Solicitor-General on the Bill, who undertook, with the approbation of the Chancellor, to move the above amendments. The Bill was amended accordingly in Committee, but it did not ultimately pass.

This Session a new Bill has been presented by the Lord Chancellor, omitting the amendments introduced last Session. The Committee petitioned the House of Lords on the subject, but unsuccessfully, and the Bill was passed and sent to the Commons, where it has been read a first time, and stands for the second reading for the 21st instant. The Committee have prepared a petition, which has been presented by Mr. Hadfield, who has undertaken to move the amendments, and they trust that their efforts will be successful in that House.

**Married Women's Reversionary Interests Bill.**—A Bill "to enable married women to dispose of reversionary interests in personal estate," has been introduced by Mr. Malins and Mr. Mullings, and was read a second time on the 4th March, and has been committed. The Bill requires the husband to concur in the deed to make it valid, and section 4 provides that the powers given by the Act shall not enable a married woman to dispose "of any interest in personal estate which may have been settled upon her by any settlement or agreement for a settlement made on the occasion of her marriage." The Committee considered that much mischief might ensue if the Bill passed without a more extended qualification, and that words should be added in clause 4, excepting from the operation of the Act any property settled upon a woman without power of anticipation. The Committee have drawn a petition to the House of Commons to this effect, which Mr. Walpole has undertaken to present, and to support the views contained in it.

**Drafts on Bankers' Bill.**—A Bill was introduced into the House of Commons on the 25th of February, to amend the Laws relating to Drafts on Bankers. It was brought in by Mr. Pellatt and Mr. Hadfield, in consequence of the recent decisions as to crossed cheques. It was a useful Bill, and much called for. As it was presented, clause 1 provided, that when a cheque was crossed with the name of a banker, it should be payable only to the banker whose name was so added; and clause 3, that when a cheque was twice crossed, the banker on whom it was drawn might, in his discretion, refuse payment of it.

This latter clause, your Committee considered, did not fully meet the case of twice crossed cheques, and thought that the discretion of paying such a cheque or not should not be left to the banker on whom it was drawn. They, therefore, communicated with Mr. Pellatt and Mr. Hadfield on the subject, and suggested that clause 3 should be amended, by enacting that when the cheque had the name of more than one banker written across, it, it should be con-

sidered as cancelled; and those gentlemen promised to consider the above suggestion.

The Government have, however, proposed and carried an amendment, that the Bill shall simply consist of an enactment that a crossed cheque shall be paid only through some banker; and the Bill now, consequently, contains no provision whatever for twice-crossed cheques. The Committee have, therefore, prepared a petition for presentation to the House of Lords, praying for the alteration mentioned above.

**Ecclesiastical Courts reform.**—The Committee regret that they are still unable to report that any sensible progress has been made towards the reform of the Ecclesiastical Courts. A Testamentary Jurisdiction Bill was introduced last Session into the House of Commons by the Solicitor-General, on the 16th of April, 1855. It was read a first time on the 16th of April, and the second reading appointed for the 26th of April. On that day a debate arose, which was continued on the 30th, and adjourned to the 4th of May, and afterwards from day to day until the 25th of June, when the Bill was withdrawn.

A Bill was presented early this Session, (February 8th) to the House of Commons by Mr. Collier, "to transfer the testamentary jurisdiction of the Ecclesiastical Courts to the Superior Courts of Common Law, and to the County Courts," and the Government subsequently re-introduced their Bill of last Session, under the title of "Wills and Administrations Bill," which proposes to establish a distinct Court of Probate, in which Solicitors will be enabled to practise. Both these Bills will receive that attention from the Committee which their importance demands.

**County Courts.**—The long-expected County Courts Act Amendment Bill was presented by the Lord Chancellor on the 11th of March. It is a most important Bill, and will be carefully considered and watched by the Committee. It contains 83 sections and two schedules. Some of the principal features in the Bill are the following:—It provides that any one appointed as a deputy to a County Court Judge shall be a barrister of seven years' standing, thereby continuing the stigma on our branch of the Profession. It contains the restriction against one attorney employing another in the County Court which is perpetuating a very great grievance. It enables actions for malicious prosecutions to be brought in the County Court. It gives the Court power to try causes (not being actions for crim. con.) by agreement of the parties, although the matters be beyond its jurisdiction. It provides, that a summons may issue, though the cause of action may not arise in the district; and that when the claim exceeds 20*l.*, the plaintiff may serve the summons. The Court fees are also very considerably reduced. It enacts, that the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than 5*l.* is recovered, or in the case of a

defendant where less than 5*l.* is claimed, or, in any case, unless by order of the Judge. It is provided that a scale of costs, to apply to actions above 20*l.*, shall be settled by the Judges of Westminster Hall. It also enacts that, in cases under 20*l.*, a solicitor shall not recover from his client more than the fees provided by the Act, unless he has consented in writing to pay a further fixed sum.

The great injustice of throwing the principal cost of professional assistance upon the party resorting to it, irrespective of the result of the proceedings, remains, as to actions under 20*l.*, unredressed. Indeed, the whole question of costs as regulated by the Bill in question is most unsatisfactory.

The Committee have prepared a circular for distribution among the Profession, drawing their attention to the above and other points, and urging them to bring every influence they can to bear upon Parliament, with a view to the amendment of the Bill.

The only step that has been taken in bankruptcy since the last annual meeting has been, that the Committee has presented a memorial to the Lord Chancellor, praying that he would introduce a Bill to amend and consolidate the Bankrupt Laws, which his lordship has acknowledged, promising that the subject should receive his attention.

**Conditions of Sale.**—The important subject of conditions of sale has also recently occupied the attention of the Committee. Several most objectionable conditions have recently been brought before their notice, and especially certain conditions emanating from the office of Woods and Forests. The Committee have been in correspondence with the Commissioners of Woods and Forests, and also with the solicitor to the department, on the subject. The question is one of very great importance. Conditions of sale have become so elaborate of late years, and so many objectionable conditions are introduced, such especially as those which provide that the vendor's solicitor shall prepare the purchaser's conveyance, and which compel the purchaser to pay the vendor's costs of proving his title, that it is time that they should be brought within reasonable limits, and it is most desirable that some general rule should be agreed upon by the Profession as a body, and carried out. The Committee will feel obliged to any of their members who will furnish them with their experience and any data on the question.

**Searches for Incumbrances.**—Another subject which has occupied the attention of the Committee is, the responsibility incurred by solicitors with regard to searches for incumbrances. The Committee have prepared a list of places where at present searches for incumbrances ought strictly to be made, and an estimate of the average expense; attached to which is a form of indemnity, to which solicitors may, if they think proper, obtain the signature of their clients, prior to making the usual searches. The Committee, however, do not recommend

this plan, entertaining, as they do, grave doubts as to how far it would be efficacious. They are anxious to have the whole system remodelled, and would be happy to see the system adopted of giving official negative certificates, as is done in Ireland; and will take an opportunity to draw the attention of the Legislature to the subject.

[To be continued.]

## SELECTIONS FROM CORRESPONDENCE.

### COUNSEL QUASI ATTORNEYS.

We understand that "M. A." was in some measure misinformed on this subject, arising from an error regarding the baptismal names of the party.

We shall, however, be glad to be informed whether a Solicitor retiring from business and being called to the Bar, is justified in reserving an annuity from the remaining members of the firm, or whether it would not be absolutely void?

### ARCHITECT'S CHARGES.

An architect agrees, prior to the erection of a house, which was originally estimated to cost about 1,000*l.*, to charge 40*l.* for his trouble. Various alterations and additions were subsequently made to the building. Is he, under such circumstances, entitled to be paid a Commission of 5*l.* per cent. on the total expenditure, which amounts to 1,500*l.*? M. A.

### ATTORNEY PARTNERSHIPS. — GROUNDS OF DISSOLUTION.

MR. EDITOR,—I served my articles about twenty years ago, on the expiration of which my master took me into partnership without a premium, for the term of our natural lives. I was glad of the favourable opportunity of establishing myself in a lucrative business. We both went on for twenty years, when my partner, having turned 72, became unable to attend to business as he has hitherto actively done. He has two children; I have none. I think it rather hard that I should continue my almost sole exertions for the benefit of both, and I seek a dissolution. Would I be justified in so doing? The sentiments of the members of the Profession would be acceptable, and by them I would be guided. I am now almost in the prime of life.

May 20, 1856.

ONE, &c.

### SMOKE NUISANCE.

I have occasionally visited an hotel at Norwood, but the nuisance arising from the smoke of the neighbouring establishment for the reception of the poor of various city unions, is perfectly intolerable. The volume of smoke

of the darkest hue constantly emitted is enormous. The pauper establishment has been erected many years, and an excellent one it is, and the hotel about three years; under these circumstances, can the owner or occupier of the hotel maintain legal proceedings to abate the nuisance?

AMICUS.

### A HINT TO THE PROFESSION.

Some time ago, an Irish gentleman forcibly conveyed his wife away with the intention of confining her in Ireland, which he afterwards succeeded in effecting for twenty years, when he died, and she then regained her liberty.

A professional gentleman, practising in London, was despatched after the party, armed with a *ne exeat regno* and a *habeas corpus*, and on seeing the husband he promised to bring forward his wife. He, however, cunningly substituted another lady, who personated her, and in answer to a question from the professional, stated that her journey was of her own free will. When too late the fraud and injustice was discovered. Surely some person to whom the wife was known should have been sent.

### PRACTICE AS TO CALLING IN MORTGAGES.

A mortgagee dies possessed of a mortgage for 1,200*l.*, on which interest had been regularly paid for 18 years. The executors' solicitor, almost immediately on probate issuing, writes a letter to the mortgagor, insisting on instant payment of the principal. Is this consistent with the usual and respectable practice, and in case of legal proceedings being adopted at Law or in Equity would the mortgagor be subject to costs? A.

### LIABILITY OF A LIVERYMAN TO A FINE ON ACCEPTING OFFICE.

I have been a liveryman of one of the city companies above 30 years, and have either served or fined in lieu of serving the office of steward on lord mayor's day. At length I am summoned to the court of the master, wardens and court of assistants to take upon myself the office of assistant at the court, or in other words to join the court. I express my willingness to do so, on which I am told a fine must be paid. I demur, although I admit on my refusal I might with some reason have subjected myself to one. The reply of the clerk, an eminent professional man, is, that the Court is authorised to impose one by the bye-laws. I request they may be exhibited—they are refused—payment of the fine being insisted upon, and legal proceedings adopted to enforce it. Surely these city companies require some reform! How these fines are spent remains to be seen. I cannot believe that any bye-law of such a character can be upheld. I shall, however, be glad of the sentiments of your legal correspondents on its validity.

ALPHA.

## ADMISSIONS OF ATTORNEYS.

Trinity Term, 1856.

Queen's Bench.

Clerks' Names and Residences

To whom Articled, Assigned, &amp;c.

Bull, William Rogers, Newport Pagnell; and  
5, Hornton Street, Kensington . . . W. B. Bull, Newport Pagnell

Last day of Trinity Term, pursuant to Judge's Order.

Borough, John, 8, Langham Place; and Gloucester Street . . . W. Borough, Derby; C. K. Freshfield, New Bank Buildings

Last day of Trinity Term, pursuant to the Rule of Hilary Term, 1853 (Notices continued).

Bartleet, Charles, Birmingham; Moorgate Street; and Croydon . . . A. Ryland, Birmingham

Bompas, William Carpenter, 11, Park Road, Regent's Park . . . P. S. Cox, Coleman Street

Bowers, Barclay George, 35, North Street, New Road, Pentonville; and Barnsbury Road . . . B. W. Rawlings, John Street; B. F. Watson, Lincoln's-Inn-Fields

Brunskill, Jonathan Ward, 5, Essex Street, Islington; Huntingdon Street; and St. Aubin's, Jersey . . . W. Bleaymire, Penrith; T. Johnston, Raymond Buildings

Clowes, Arthur Tallent, 2, Lower Calthorpe St., Gray's Inn Road; and New Buckenham . . . E. N. Clowes, New Buckenham

Dew, Charles, 73, Denbigh Street, Pimlico; and Salisbury . . . G. Hancock, Denbigh Street

Gregory, Charles, Eyam . . . E. Lambert, John Street

Harris, Charles Rice, Tredegar . . . J. G. H. Owen, Pontypool

Head, Robert William, 14, Upper Brook St.; and Alplington . . . C. H. Venn, Exeter; R. T. Head, Exeter

Horden, Alexander Radcliffe, 3, South Molton Street, Bond Street . . . H. C. Kingsford, Canterbury

Lee, Frederic Coope, 17, Inverness Road, Bayswater . . . T. French, Eye

Mourilyan, J. Noakes, jun., 3, King William Street, Strand; Gray's Inn Road; and Sandwich . . . J. N. Mourilyan, Sandwich

Nash, Alfred Dormer, 14, Great Coram St., Russell Square . . . J. J. Wathen, Bedford Square; H. Crocker, Chancery Lane; A. Mayhew, Carey Street

Prescott, Byam Martin, 29, Wakefield Street, Regent's Park, and Southampton . . . T. A. Fellowes, Chippenham

Roper, George Edw., Trevor, 9, Huntley St., Bedford Square; Brussels; and Plas Têg Mold, Flint . . . W. B. Collis, Stourbridge

Roper, Samuel, 31, Victoria Street, Bristol . . . B. Hope, Brompton; T. Hyatt, Shepton Mallet

Spencer, John Charles, Peckham, and Kirkby Lonsdale . . . Messrs. Gregg, Kirkby Lonsdale

Thompson, George, 30, Clarence Street, St. Peter's, Islington; and Grove House . . . L. Thompson, York

Tossell, Charles Speare, 8, Carlton Hill East, St. John's Wood . . . J. T. Church, Bedford Row

Venn, William, 4, Upper Street, Islington . . . J. A. M. Pinniger, Raymond Buildings; E. Clarke, Bedford Row

Williams, Robert, 27, Myddleton Square; Clerkenwell . . . J. P. Jones, Denbigh; T. Rogers, Fenchurch Street

Re-Admissions, last day of Michaelmas Term.

King, William Henry, 34, Bloomsbury Square; and Burton Crescent.

Last day of Trinity Term.

Makinson, Thomas, Manchester

Sill, Richard, Walsall

## RENEWAL OF CERTIFICATES.

13th June.

Chase, Samuel Compigne, 5, Sidmouth St., Gray's Inn Road.

Chorley, Thomas Fearncombe, Cottage Pl., City Road.

Cockeram, William Philip, 24, Noel Street, River Terrace, Islington; Calthorpe Street; Chadwell Street; Cerns Abbas, and Salisbury.

Currey, Benjamin Scott, Blackheath Park. Dickenson, Edward Tayleur, 184, York St., Hulme, near Manchester.

Gee, Robert, Stroud.

Hill, Thomas, Middle Temple Lane; and Birmingham.

Lee, James Frankham, 4, Pancras Lane; and Clapham Rise.

M'Rae, James Layton, 34, Great Hermitage Street, London Docks; and Rochester.

Rashleigh, Charles Edward, 56, Lincoln's-Inn-Fields; Chester Place; Farningham Hill. Read, Edmund, 13, Tokenhouse Yard; and Greenwich.

Rigley, Henry Adolphus, 5, Great Chapel Street, Oxford Street; Bateman's Buildings; and Newport Street.

Spencer, Robert, 30, Westmorland Street, Newcastle-upon-Tyne.

## EXAMINATION AT THE INNS OF COURT.

### RESULT OF THE EXAMINATION OF STUDENTS.

Trinity Term, 1856.

THE Council of Legal Education have awarded to—

*William Lambert Dobson, Esq.*, Student of the Middle Temple, and *Wells Butler, Esq.*, Student of Lincoln's Inn, Certificates of Honour of the First Class.

*William Markby, Esq.*, Student of the Inner Temple; *Charles Beard Isard, Esq.*, Student of Lincoln's Inn; *Athelstane Willcock, Esq.*, Student of Lincoln's Inn; *Charles A. W. Cramp, Esq.*, Student of the Inner Temple; *Frederick Serbohm, Esq.*, Student of the Middle Temple; and *Edward Bullock, Esq.*, Student of the Inner Temple, Certificates that they have satisfactorily passed a Public Examination.

By Order of the Council,

(Signed) RICHARD BETHELL, *Chairman.*

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

### House of Lords.

Appellate Jurisdiction (House of Lords).—Lord Chancellor. For 2nd reading, May 30.

Marriage Law Amending.—Lord Brougham. For 3rd reading.

Clergy Offices.—Bishop of Exeter. For 2nd reading.

Fire Insurances.—Lord Stanley. For 2nd reading, May 27.

Married Women's Reversionary Interest.—For 2nd reading.

Drainage Act Amendment.—In Select Committee.

Divorce and Matrimonial Causes.—Lord Chancellor. In Select Committee.

County Courts Act Amendment.—Lord Chancellor. In Committee, May 30.

Charitable Uses. For 2nd reading, June 3.

Judicial Statistics.—Lord Brougham. For 2nd reading.

Mercantile Law Amendment.—Lord Chancellor. In Select Committee.

Drafts on Bankers. For 2nd reading, June 6.

Mercantile Law Amendment (Scotland).—In Select Committee.

Bankruptcy (Scotland).—Lord Chancellor. In Committee, May 27.

### House of Commons.

Leases and Sales of Settled Estates. For 2nd reading, May 30.

Law of Partnership (No. 2).—Mr. Lowe. In Committee, May 30.

Joint-Stock Companies.—Mr. Lowe. Report of amendments, May 30.

Joint-Stock Companies' Winding-up Acts Amendment.—For 2nd reading, May 30.

Shipping Tolls, &c., Abolition.—Mr. Lowe. In Select Committee.

Judgments, Execution, &c.—Mr. Craufurd. For 2nd reading, June 5.

Amendment of Procedure and Evidence.—Sir F. Kelly. In Committee, May 30.

Court of Probate of Wills and Grants of Administration.—Solicitor-General. For 2nd reading, May 30.

Testamentary and Matrimonial Jurisdiction.—Sir F. Kelly. For 2nd reading, May 30.

Ecclesiastical Courts.—Mr. Collier. For 2nd reading, June 11.

Judge and Chancellors (Ecclesiastical). For 2nd reading, June 12.

Sleeping Statutes' Repeal.—Mr. Locke King. For 3rd reading, May 30.

Oath of Abjuration.—Mr. Milner Gibson. In Committee, May 23. For 3rd reading, June 2.

Poor Removal (No. 2).—Mr. Bouverie. For 2nd reading, June 6.

Church Rates Abolition.—Sir W. Clay. In Committee, June 2.

Amended Formation of Parishes.—Marquis of Blandford. Re-committed, May 30.

Advowsons.—Mr. Child. In Committee, June 2.

Imprisonment for Debt.—Mr. Pellatt.

Burial Acts Amendments.—Mr. Massey. For 2nd reading, June 2.

Public Health Amendment. For 2nd reading, June 6.

Specialty and Simple Contract Debts.—Mr. Malins. For 2nd reading, May 27.

Tithe Commutation Rent Charge.—Mr. R. Phillimore. In Select Committee.

Medical Profession.—Mr. Headlam. In Select Committee.

Medical Qualification and Registration.—Lord Elcho. For 2nd reading.

Trust Property Criminal Appropriation.—Attorney-General.

County and Borough Police.—Sir G. Grey. For 3rd reading.

Public Prosecutors.—Mr. J. G. Phillimore. In Select Committee.

Qualification of Justices of the Peace.—Mr. Colville.

London Corporation.—Sir G. Grey. For 2nd reading, May 26.

Courts of Common Law (Ireland). Re-Commited, May 30.

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when Gasetted.*

Allen, Edward, Manchester, in and for the county of Lancaster. May 2.

Smith, George Moore, Whittlesey, Isle of Ely, in and for the county of Cambridge. April 25.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 22nd April, to 23rd May 1856, both inclusive, with dates when Gasetted.*

Birch, James, and Frederick Alexander Curling, 5, Great Winchester Street, City, Attorneys and Solicitors. April 22.

Cattlow John Reynolds, and Edward Daniel,

Cheadle and Stone, Attorneys, Solicitors, and Conveyancers. May 2.

Seaman, Edward Cleveland, and Frederick Lewis Lyne, 12, Pancras Lane, Queen Street, Cheapside, Attorneys and Solicitors. April 29.

Unett, John Wilkes, John Unett, and Geo. Unett, Birmingham, Attorneys and Solicitors (so far as regards the said John Wilkes Unett). May 23.

Wilson, Cornwell Baron, and James Pattison, 13, Furnival's Inn, Holborn, Attorneys and Solicitors. April 29.

## NOTES OF THE WEEK.

### QUEEN'S BENCH SITTINGS.

At a little before two o'clock, Mr. Watson, Q. C., rose and asked whether the Court would rise at two o'clock or not? Mr. Justice Coleridge said, the Court had come to no such decision.

### SITTINGS IN EXCHEQUER CHAMBER.

The Court will sit and take cases in *Error* from the Queen's Bench on the 2nd and 3rd of June; from the Common Pleas on the 13th and 14th of June; and from the Exchequer on the 16th and 17th June.

### INSOLVENT DEBTORS' COURT SITTINGS.

Mr. Commissioner Phillips has adopted a rule not to sit later than four o'clock, an arrangement likely to satisfy all persons having business in this Court.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

**Vice-Chancellor Kindersley.**

*Olney v. Bates.* May 24, 1856.

**WILL.—CONSTRUCTION.—ADEMPTION OF LEGACY.**

*A testator, having lent a legatee 200l. upon a memorandum that it was to be deducted from his share under A.'s will, afterwards by his codicil cut down his interest to a life estate: Held, that the 200l. was, nevertheless, to be deducted from the share of the legatee.*

It appeared that a testator, who by his will gave his son, Thomas Olney, an absolute interest with the other children in his estate, advanced him 200l., taking a memorandum in the form of a receipt, to the effect that the executors should deduct that amount from his interest under the will. The testator subsequently altered his will by a codicil, whereby he gave Thomas Olney a life interest only, without power of anticipation or disposition, with gift over to his children. The question now arose whether the 200l. was still to be deducted from his interest under the will and codicil.

Glasse and Greene for the plaintiff; Baily Hopwood for the defendants.

The Vice-Chancellor said, that the debt was not discharged by what had taken place, and that 200l. must be deducted.

*Cook v. Gregson.* May 27, 1856.

**CREDITORS' SUIT.—ASSETS, LEGAL OR EQUITABLE.—EQUITY OF REDEMPTION.**

*Held, that the equity of the equity of redemption of a mortgage by the testator are legal and not equitable assets in the hands of executors.*

It appeared in this creditors' suit against the executor and executrix, that she had mortgaged certain estates in Antrim, Ireland, and again mortgaged the equity of redemption. The question now arose, whether the equity of this equity of redemption was legal or equitable assets. The chief clerk had held that it was equitable.

Glasse and Cotton for the plaintiffs; Baily and Toller for the executrix; Swanston and C. Hall for the executors; Giffard for other parties.

The Vice-Chancellor said, that the plain distinction between legal and equitable assets was, that the one was assailable in a Court of Law,

the other in a Court of Equity. If a creditor sued an executor at law and there was a plea of *plene administravit*, the question was, whether what he had received as assets could be regarded by a Court of Law as received in his character of executor. Upon general principles, where an executor received assets *virtute officii* they were legal assets which he had a right to recover, and this applied to an equity of redemption, which was not a matter of indulgence, but a right.

### Court of Queen's Bench.

*Kernot v. Baily and another.* May 24, 1846.  
COUNTY COURT.—JURISDICTION.—MANDAMUS.

*Where the Judge of a County Court had gone into the question whether the cause of action in a plea against defendants living out of the jurisdiction, had arisen within the jurisdiction, and decided that he had no jurisdiction under the 9 & 10 Vict. c. 95, c. 60, a rule for a mandamus will not lie.*

THIS was a motion for a rule nisi for a mandamus on the Judge of the Somersetshire County Court, held at Bath to hear this plaintiff, which was brought by a manufacturer at Bath against the defendants, who carried on business at Bristol. The Judge, after hearing the plaintiff's evidence for that purpose, held that a part of the cause of action had arisen in Bristol he had no jurisdiction under the 9 & 10 Vict. c. 95, c. 60, and nonsuited the plaintiff.

*W. M. Cooke* in support.

The Court said, that a mandamus never went to a Judge to compel him to do his duty as Judge, unless he refused to enter on his duty. The facts did not show that he had declined jurisdiction, but the plaintiff in order to entitle himself to judgment where the defendant lived out of the jurisdiction, was bound to show that the cause of action arose within the jurisdiction. The Judge had tried this question, and his decision was conclusive. The rule would therefore be refused.

### Court of Common Pleas.

*In re Edmund Garbett, gent., one, &c.* May 8, 22, 1856.

ATTORNEY.—RESTORING TO ROLL.—PERJURY AND FORGERY.—TESTIMONIALS.

*An attorney had been struck off the Rolls in 1849, upon its appearing that certain payments to witnesses sworn to in his affidavit of increase had not been made. He had been also convicted of forgery in 1847, but the conviction had been set aside on the ground that the confession of the offence was obtained by the Judge under a threat of imprisonment. A rule was refused to restore him to the Rolls, although seven years had elapsed and testimonials were obtained signed by 68 attorneys in the counties where he practised, by 35 London attorneys, and by 45 magistrates, clergymen, barristers, and others who knew the applicant and es-*

*pressed a hope he might be restored to the Roll.*

THIS was an application by Mr. Edmund Garbett, of Dawley, in the county of Salop, to be restored to the Roll of Attorneys of this Court. It appeared that he had been struck off the Roll in Michaelmas Term, 1849, for having sworn in an affidavit of increase in an action of *Harcourt v. Dixon*, to the payment of certain witnesses, which had not been made. The application had been directed to stand over in order to bring before the Court the conviction of the applicant in 1847, for forgery, but which conviction it appeared had been reversed on the ground that the confession of the offence had been obtained by Lord Denman, C. J., under the threat of imprisonment. This had accordingly been done.

*Whateley and Dowdeswell* in support of the application; *H. J. Hodgson* for the Incorporated Law Society.

*Jervis, L. C. J.*, said:—"It seems to me there is no pretence whatever for this application,—we are not here now upon an application to strike Mr. Garbett off the roll,—we are not here considering aye or no, whether upon an application hostilely against him the punishment should be to strike him off or suspend him for a limited time, that is not the question, the question is whether, he being off the roll as an officer of the Court should be restored to the roll by this Court, and so invested with an authority which, in my mind, would make him a most dangerous individual; and the application is made under these circumstances,—he is admitted to have committed forgery, it is true that the conviction was set aside, and he was pardoned because a portion of the evidence which led to that conviction was his own confession, extorted by Lord Denman under a threat of imprisonment, but there was and is abundant evidence in the case under his own hand-writing to prove that he was guilty of forgery without respect to that admission, and it would be intolerable where a party is asking here to be clothed with the authority of the Court to mislead and impose on the public that we should give him that authority knowing that he has committed forgery, simply because technically the very best evidence which proves it, is not legally admissible against him, namely, his own. We start then, that he has been guilty of forgery, and this Court has adjudged that he has been guilty in substance of perjury, because he has knowingly imposed on the officer of the Court in using what he knew to be a false affidavit,—we have therefore the application of an individual guilty of forgery, and adjudged guilty of perjury, who applies to this Court to be admitted as an attorney, to be clothed with authority where perjury and forgery, or the propensity to them, is of all things the most dangerous,—he applies to the Court on what ground? That he has suffered punishment enough, and that some individuals in his neighbourhood, who have dealt with him as an iron master and otherwise, have found him honest in his dealings, and



that others think it would be in their judgment (happily for the country they are not the Judges in the matter) quite right that he should be re-admitted—surely that is no ground. This Court would be guilty of the grossest dereliction of duty if they restored him to society, without what ought to be at least some pledge to the public of his personal respectability. Mr. Dowdeswell puts it upon another ground,—he concludes his observations by saying, that he is a man in failing health, has a wife and family, and that his punishment brings disgrace upon them. I have always supposed, in considering these matters, that the wife and family were to be guarantees to society that the man shall conduct himself with respectability, and should not be grounds, when a man has so forgotten himself as to sacrifice them, to ask others for indulgence on account of the wrongs he has inflicted upon them. There seems to me no ground whatever for the application,—the application is itself irresistibly answered by the circumstances which cannot be explained, and I think I should be as bad as he, if I were to grant the application."

*Williams, J.*—"I am entirely of the same opinion. We are asked, as an act of grace to restore to the roll of attorneys of this Court, a man who, by his own admission, was deservedly struck off some time ago for perjury, and it is admitted, and no one can dispute it, that if in addition to that offence he also has been guilty of the crime of forgery, we cannot with decency be asked to do an act of grace to a person who comes to us with such a reputation. But we are asked to shut our eyes to the fact that he has been guilty of the crime of forgery. It is perfectly clear to my mind that he was not properly convicted of the crime of forgery, but it is equally clear to my mind that he was guilty of it,—it is impossible that we can shut that out from our consideration, when we are asked to do an act which is not merely a question between the Court and the individual, but between the Court and the public. I think we should be guilty of a gross neglect of duty if we were not to bear in mind that the person who asks it is a person who has been convicted of an act of forgery."

*Willes, J.*, concurred, and the application was accordingly refused.

#### Court of Eschequer.

*Love v. Lander and Wife.* May 28, 1856.

SALE OF PUBLIC HOUSE.—COVENANT.—BREACH.—MARRIAGE OF VENDOR.

*Held, overruling a demurrer to the plea, that a covenant in a deed by a widow, upon the sale of a public-house, that she would not take, keep, or be interested or concerned in any public-house within one mile of that sold to the plaintiff, was not breached by the vendor subsequently marrying a publican who carried on business within such prescribed limits, and although she resided and acted as barmaid there.*

THIS action was brought to recover the sum

of 50*l.* for the breach of covenant entered into by the defendant's wife before her marriage, upon the sale of a public-house to the plaintiff, whereby she covenanted not to take, keep, or be interested or concerned in any public-house within one mile of that sold to the plaintiff. It appeared, however, that the vendor had married the defendant, Mr. Lander, a publican, within the prescribed limit, and that she resided and acted as barmaid there. The plea set out the marriage, and that the vendor was only interested or concerned in her husband's public-house as his wife and under his directions and orders.

*Prentice* in support of a demurrer to this plea.

The Court (without calling on *H. Hall*, contra) said, that if the parties had intended to provide for the contingency which had happened, it should have been so stipulated. But here the words of the covenant must be construed as *quodam generis*, and that the vendor covenanted not to take any direct interest or concern as principal and did not extend to the indirect interest or concern attaching to a wife in her husband's business. The plea was therefore an answer to the action, and the demurrer would be overruled.

*Alexander v. Davis.* May 27, 1856.

CHARTER-PARTY.—CLAIM FOR DEMURRAGE.—SETTLEMENT BY CAPTAIN AND PART OWNER.

*The captain of a vessel, who was also part owner, settled at a foreign port a claim for demurrage at a less amount than that stipulated for by the charter-party: Held, discharging a rule nisi to set aside the verdict for the defendant and to enter it for the plaintiff (the original owner), in an action to recover the residue, that he had power to make the arrangement in question, and that it was binding on all parties interested.*

THIS was a rule nisi to set aside the verdict for the defendant and to enter it for the plaintiff in this action against the charterer of a vessel for demurrage. It appeared on the trial, before *Willes, J.*, that the plaintiff had, subsequently to the date of the charter-party in question, sold his interest in the ship, and that the captain had purchased one-eighth, and Messrs. Firmie the remainder. The demurrage, which arose abroad, had been settled by the captain at an amount less than that provided for by the charter-party, and Messrs. Firmie brought this action in the name of the plaintiff against the owner, to recover the residue. The defendant pleaded accord and satisfaction.

*E. James and Quain* in support of the rule.

The Court (without calling on *Forsyth* and *Mellish*, contra) said, that the captain had power, under the circumstances, to enter into the arrangement, and besides he was a part owner and as such had power to settle the claim, and his arrangement was binding on all parties interested. The rule was accordingly discharged.

## ADVERTISEMENTS.

Camden-town.—Valuable Premises, formerly the Board-room of the Commissioners of Paving for the Camden Estate.

**MESSRS. DENT and SON** have received instructions from the Vestry of the Parish of St. Pancras, in whom the above property has become vested under the Metropolitan Local Management Act, to offer for SALE by AUCTION, on Wednesday, June 11, at Garraway's, all those substantially erected and valuable PREMISES, with the spacious Yard and Appurtenances, situate No. 10, on the north side of Pratt-street, to which there is a frontage of 52 feet 9, by a depth of 180 feet; held under the Marquis Camden and Prebend of Cantlowes for a term of which 71 years will be unexpired at Michaelmas, 1856, at a ground rent of £10 per annum. Further particulars and conditions of sale, with plans, to be had on the premises; at the place of sale; at the office of the Vestry Clerk, Vestry-hall, St. Pancras Old-road; and of Messrs. Dent and Son, surveyors, 36, Southampton-buildings, Chancery-lane, and 38, High-street, Camden-town.

Valuable and Important Estates, St. Pancras, by order of the Vestry of the parish of St. Pancras.

**MESSRS. DENT and SON** have received instructions to offer for SALE by AUCTION, on Wednesday, June 11, at Garraway's, the very valuable and extensive LEASEHOLD PREMISES, situate 10, Edward-street, Hampstead-road, St. Pancras, heretofore the board room, office, stone-yard, and premises of the Southampton Paving Commissioners, now transferred to the Metropolis Local Management Act, held under Lord Southampton for a term of which 65 years will be unexpired at Michaelmas next, at a ground rent of £29 12s.; also a Leasehold House and Premises, No. 7, on the south side of Charles-street east, originally erected for the said Commissioners, held likewise under the Southampton estate for a term of which 53 years will be unexpired at Michaelmas, 1856, at a ground rent of £3 15s. per annum: the latter underleased for a term of 21 years from Midsummer, 1849, at £50 per annum, the under-lessee having substantially repaired and improved the property. Particulars and conditions of sale, with plans, to be had on the premises; at the place of sale; at the Vestry Clerk's office, Old St. Pancras, where the leases may be seen; and of Messrs. Dent and Son, surveyors, 36, Southampton-buildings, Chancery-lane, and 38, High-street, Camden-town.

The valuable and important Freehold Manor of Newington, Barrow, otherwise Highbury, in the parish of St. Mary, Islington, in the county of Middlesex.

**MESSRS. DENT and SON** have received instructions to offer for SALE by AUCTION, at Garraway's on Wednesday, 18th June next, the above most valuable and improving MANOR, heretofore parcel of the possessions of the Crown, with all the customary advantages, arising from courts baron, courts leet, courts of survey, fines at the will of the lord, on death or alienation, quit rents, royalties, and all rights, members, profits, emoluments, and appurtenances thereto belonging. By a survey made by order of Henry Prince of Wales (the eldest son of King James I.) in 1611, the manor was founded to contain nearly 1,000 acres, of which 113a. 3r. 0p. were freehold, 407a. 0r. 4p. demesne lands, and 414a. 3r. 14p. were copyhold of inheritance. By the custom of the manor two years' improved rent is payable to the lord on death or alienation. The quit rents payable at this time amount to £3 18s. 10d. per annum, extending over very valuable property, estimated at upwards of £1,300 per annum, exclusive of those in abeyance. The emoluments to be expected to arise from lands and appurtenances, from which the quit rents and customary fines and payments have been omitted to be enforced, or are in abeyance, are very considerable; and the whole forms an important investment in every respect worthy the attention of gentlemen of the legal profession or the capitalist. Particulars and conditions of sale, with a plan of the manor, are in progress and will shortly be ready at the place of sale; the Angel Tavern and the Blue Coat Boy at Islington; the Gate-house, Highgate; the Archway Tavern, Upper Holloway; the Compasses at Hornsey; the Plough, Hornsey-road; at the offices of B. W. Powys, Esq., solicitor, 38 Russell-square; and of Messrs. Dent and Son, 36, Southampton-buildings, Chancery-lane, and Camden-town.

Marylebone, Stoke Newington, and Liverpool-road, Islington.

**MESSRS. DENT and SON** will SELL by AUCTION, at Garraway's, on Wednesday, June 18, at 12, in three lots. No. 82, PARK-STREET, Dorset-square, let at £40 per annum, held at a peppercorn for 45 years; No. 4, Howard-street, Howard-road, Stoke Newington, held for 95½ years from Midsummer, 1856, at a ground rent of £8 10s., and let at £26 per annum; Nos. 11 and 20, Richard-street, Liverpool-road, Islington, let at rents amount-

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ing to £46 per annum, No. 11 held for 14½ years at £6, No. 20 held for 15½ years at £6 per annum. Particulars and conditions of sale to be had of J. B. Booth, Esq., solicitor, 51, Tavistock-square; and Dent and Son, 36, Southampton-buildings, Chancery-lane, and Camden-town.

Kentish Town.—Leasehold Investments.

**MESSRS. DENT and SON** will SELL by AUCTION, at Garraway's, on Wednesday, the 18th of June instant, at 12, SIX LEASEHOLD HOUSES, Nos. 1 to 6, on the west side of Alma, held by separate leases for about 69 years, at a ground rent of £5 each. Also Two Houses, in Clarence-road, Kentish-town, Nos. 10A and 11A, let at rents amounting to £66 per annum, and held for about 70 years, at ground rents—No. 10A at £5, and 11A at £4 per annum. Particulars to be had on the premises in Clarence-road; the "Jolly Anglers" public-house (near Alma-street), Kentish-town; of John Fraser, Esq., Solicitor, No. 16, Furnival's-inn; and Messrs. Dent and Son, No. 36, Southampton-buildings, Chancery-lane, and Camden-town.

First-rate Freehold Investment, Dorsetshire.

**MESSRS. BROOKS and BEAL** have received instructions to submit for SALE by AUCTION, in 1 or 6 Lots, at Garraway's, on Thursday, 10th July, at 12, unless an acceptable offer be in the meantime made by private treaty, a Tithe-commuted FREEHOLD ESTATE, consisting of three very desirable Farms, a Water Corn Mill, and Cottages and Gardens, containing in a ring fence 508 acres, 2 roods, 3 poles, situate in the several parishes of South Perrott, Cheddington, Broadwinor, and Beaminster, together with the MANOR, or REPUTED MANOR, of PICKETT. Let to highly respectable and responsible tenants, producing an annual rent of £825, independent of the plantations and woodlands in hand, Capital roads.

Particulars and plans may be obtained at the Hotels, Beaminster, Bridport, Crewkerne, Winterborne Abbas, Dorchester; Baruch Fox, Esq., Beaminster; Frederick Dowding, Esq., Bath; E. T. Whittaker, Esq., 12 Lincoln's Inn-fields; and of Messrs. Brooks and Beal, Land Agents and Auctioneers, 209, Piccadilly.

**ADVOWSON or NEXT PRESENTATION** for SALE in the midst of good society. Good county. Population small. Duty light. Income £300 per annum. To treat apply to Messrs. Brooks and Beal, 209, Piccadilly.

**SUSSEX.**—To be SOLD, a valuable and desirable ESTATE, comprising an elegant residence, seated in a finely wooded and park-like lawn, with nearly 250 acres of arable, pasture, and woodland. Good farm house and buildings. The land is in a high state of cultivation, and well drained. For further particulars apply to Messrs. Brooks and Beal, estate agents and auctioneers, 209, Piccadilly.

**HANTS.**—To be SOLD, a small RESIDENTIAL ESTATE, prettily situate, of elegant architectural design, and some 60 acres of land. For price apply to the land agents, Messrs. Brooks and Beal, 209, Piccadilly. (E. 289.)

**WEST END CHAMBERS**, in the immediate vicinity of the clubs, fitted up with all modern improvements, for the accommodation of noblemen and gentlemen of rank. The apartments are extremely lofty, and water-closets, warm baths, larders, and cellars for each.—Apply to Messrs. Brooks and Beal, estate agents, &c., 209, Piccadilly.

**TO** be SOLD, a splendid MANORIAL ESTATE and handsome MANSION and ADVOWSON, seated in one of the best counties of England. The whole estate of 1,800 acres will be sold, or the mansion and 500 or 100 acres only. Detailed particulars may be had on application to the auctioneers, Messrs. Brooks and Beal, 209, Piccadilly.

**HUNTING and SHOOTING.**—Messrs. Brooks and Beal are instructed to LET, for the shooting or hunting seasons, or for one or three years, FURNISHED, a MANSION, seated in a beautiful timbered park, comprising ample accommodation for a nobleman's or gentleman's family. The pleasure-grounds are beautiful. The flower and kitchen (walled) gardens well stocked. There is the exclusive right of shooting over the manor.—Apply at their offices, 209, Piccadilly.

**NEAR STAINES.**—Messrs. Brooks and Beal are instructed to LET a capital FAMILY MANSION, seated in a noble timbered park. Shooting over about 700 acres may be had, and land to be agreed upon. The mansion contains four sitting rooms, about sixteen bed rooms, dressing rooms, capital offices, coach houses and stable, &c.—Estate and auction offices, 209, Piccadilly.

**HANTS.**—Messrs. Brooks and Beal are honoured with instructions to SELL a compact FREEHOLD ESTATE of 180 acres of meadow and arable land, with an excellent residence. The grounds are well laid out, embellished by fine timber. The homestead is perfect. The whole well drained, and may compete with any estate in the county for the quantity and weight of produce. For terms, &c., apply at the agency offices, 209, Piccadilly.

**HANTS.**—To be SOLD, a compact FREEHOLD ESTATE, of about 240 acres, with very pretty and commodious Residence. There is a small park, delightful grounds, and wood of about 40 acres. It produces £880 per annum. For cards, &c., apply to Messrs. Brooks and Beal, estate agents, 209, Piccadilly. (Fo. E 848.)

**HYDE PARK SQUARE.**—Messrs. Brooks and Beal are instructed to SELL, by Private Contract, the valuable GROUND LEASE for 78 years of a handsome and substantial MANSION, having elegant reception rooms, numerous dormitories, conveniently placed water-closets, ample offices, coach-house and stabling. Cards and particulars may be had of the auctioneers, 209, Piccadilly.

Notice.—Freehold Family Residence, with Stabling, &c., Clapham-common, with possession.

**MESSRS. H. BROWN and T. A. ROBERTS** beg to notify that the detached RESIDENCE of the late Mrs. Clavering, situate in Nightingale-lane, a few paces from Clapham-common, was NOT SOLD at the recent auction, and they are prepared to DISPOSE OF the same by private treaty.—22 Throgmorton-street, city.

Notice.—A convenient Family Residence, in the Grove, Hammersmith.

**MESSRS. H. BROWN and T. A. ROBERTS** beg to notify that the semi-detached RESIDENCE, No. 20, Verulam-terrace, the Grove, Hammersmith (with possession), was NOT SOLD at the recent auction, and they are prepared to Dispose of the same by Private Treaty.—22, Throgmorton-street.

Kent.—Wilmington Hall, with its far famed hop gardens, late the property, and for many years the residence of George Russell, Esq., deceased. Also a small Farm, Cottages, and sundry pieces of land in the village of Wilmington.

**MESSRS. H. BROWN and T. A. ROBERTS** have received instructions to SELL by AUCTION, at the Mart, in July, in lots, unless an acceptable offer shall be previously made, the valuable estate of Wilmington Hall, which is pleasantly situate on the borders of Dartford-heath, about two miles from the Dartford Railway Station, and comprises a most comfortable mansion of a moderate size, and inexpensive scale, lying secluded in a rich park-like paddock, ornamentally timbered, and contains eight bed chambers, dressing rooms, servants' rooms, four reception rooms of good proportions, conservatory, billiard room or nursery, excellent domestic offices, capital pleasure and walled gardens, hanging wood, with terrace walks, stabling, loose boxes, ice house, entrance lodge, and all necessary appurtenances for a gentleman's establishment; also a valuable farm, with oast-houses, fitted with patent kilns, and all requisite buildings, bailiff's house, labourers' cottages, and in all about 70 acres of land in high cultivation; about 38 acres are planted with golding-hops, of well-known excellence, and which have always commanded the highest price in the market, possession will be given; likewise a small Farm and fruit plantation, situate in the village of Wilmington, containing about 19 acres; also five brick-built Cottages, carpenter's shop and cottage, and four small pieces of land—the whole is freehold and land-tax redeemed. To be viewed by cards only, which with printed particulars may be shortly had of Messrs. H. Brown and T. A. Roberts, 22, Throgmorton-street, city.

Whitechapel.—A capital investment, late the property of Mr. John Cramp, deceased.

**MESSRS. H. BROWN and T. A. ROBERTS** will SELL by AUCTION, at the Mart, on Wednesday, June 11, at 12, the excellent BUSINESS PREMISES, No. 42, High-street, Whitechapel, let on lease to Mr. George Smith, baker, at the very moderate rent of £65 per annum, copyhold to the manor of Stepney, but nearly equal in value to freehold, the fine on admission being only 10s., and the quit rent 8d. per annum. Printed particulars may be had of Messrs. Jenkinson, Sweeting, and Jenkinson, 7, Clement's-lane; of G. R. Jaquet, Esq., New-Inn, Strand; of H. J. Semple, Esq., 21, Duke-street, Manchester-square; and of Messrs. H. Brown, and T. A. Roberts, 22 Throgmorton-street, city.

**TO TRUSTEES AND OTHERS.**—A FREEHOLD INVESTMENT of the first class, net rental £210 per annum, arising from Extensive Premises at East Greenwich, let on lease to a highly responsible tenant. Messrs. HUMPHREYS and WALLER are instructed by the Trustees to SELL by AUCTION, at the Mart, on Wednesday, 18th June, at 12. The valuable Steam Engine and Boiler Works, consisting of substantial and convenient buildings, in an enclosed yard, fronting the River Thames, at East Greenwich; in the occupation of Mr. Beale, who holds on lease for 16 years, at £210 per annum. As the neighbourhood is rapidly improving, and the tenant has a valuable interest in the property beyond his rent, this Estate can be recommended as a first-class investment. At the same time will be sold the Extensive Manufacturing Premises adjoining (with possession), 10 cottages, and certain pieces of land. Printed particulars may now be had of Messrs. Tatham, Upton, Upton, and Johnson, Solicitors, Austin Friars; at the Mart; and of Messrs. Humphreys and Waller, 68, Old Broad-street, City, and Romford, Essex.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, JUNE 7, 1856.

### STATE OF THE LAW BILLS IN PARLIAMENT.

THE Bills in Parliament for the alteration of the Law appear to be more than ordinarily slow in their progress. Two months, however, remain, according to the modern practice, in the duration of the Session, to complete the measures under consideration, and we hope that some at least of the important proposed amendments will yet ripen to maturity.

The Leases and Sales of *Settled Estates* having passed the Lords, although still lingering in the Commons, may be speedily completed; but there is still a stout opposition on account of the omission of the clause which sought to withdraw from the jurisdiction of the Court of Chancery cases which had already been refused by Parliament,—such as the power of leasing by the Lord of the Manor of Hampstead. Government might settle this question by purchasing the heath and forming a public park. We trust, that by some means or other, so useful a measure regarding settled estates, adapted equally to benefit the Public and the Profession, will be introduced into effect.

Another Bill of great general importance relating to the Law of *Joint-Stock Companies*, including the power of forming “limited liability” partnerships. This Bill, after several alterations, and much opposition and discussion, has at length passed the House of Commons, and as it relates to trade and commerce, with the interests of which it may be supposed a large proportion of the members of the lower House are well acquainted, we do not anticipate much difficulty in the upper House. Perhaps one or two Lords, who are, or have been, connected with great banking establishments, may have a fault and “hesitate dislike,” but it is probable the Government will be able to surmount any objections that yet remain.

The other Bill for the amendment of the Law of *Partnership* involves the question of the liability of persons who are *not* partners but participate in the profits of commercial business in return for monies advanced to carry it on;—the interest for such advances being regulated by the amount of the profits of the business. So as to the salaries of agents dependent on the extent of the profits, we understand there are managers of large commercial undertakings who receive a remuneration equal to a County Court Judge or Taxing Master, and the Law, if altered, would allow such agents to receive a per-centage on the result of their skill and exertion: thus stimulating their energy and benefiting their employers. The creditors of these great concerns do not give credit to the agent, but to the actual partners. Why should the industrious and skilful agent be involved in the bankruptcy of his employers, if they fail in their enterprizes from the change of markets, or losses, or accidental causes to which trade and commerce are liable?

The *County Courts Amendment Bill*,—the scope of which we described last week, does not seem to give satisfaction either to the promoters of the extended jurisdiction of those Courts, or to those who prefer the ancient and Superior Courts with all the amendments they have lately undergone. It cannot be seriously proposed that the County Courts should have jurisdiction in “the first instance” in *all* cases, and the Courts of Westminster merge into mere Courts of *Appeal*,—that all the vast and extensive jurisdiction in public matters, as well as in private litigation, should be transferred to the County Courts! The ground and principle on which these “Small Debt Courts” were established should be preserved, namely, that their jurisdiction be limited to cases of small amount, and the fees and costs of which should be proportionately moderate.

There seems now to be an inconsistent attempt made to increase the costs in the County Courts even beyond those of the Superior Courts, in order to attract the suitors to the inferior tribunal. We hear, by reiteration without end, of the popularity of the County Courts, and yet their promoters dare not enter into competition with the Superior Courts. The Legislature has been induced, contrary to all the rules of modern "free trade," to abrogate the power of a suitor to employ his attorney in the Superior Court to recover debts under 20*l.*, though he will thereby save his time and trouble. The truth we believe to be, that the County Courts greatly disgust a large proportion of creditors, and in so far operate as a denial of justice. We are assured that a multitude of traders abandon their debts, rather than lose their time and suffer the loss and inconvenience incident to the attendance of taking out the summons, appearing at the hearing by themselves and their witnesses, and then attending to search for the payment of the instalments of the debt.

Under proper limits, and an amended practice, these Courts might be useful, but the incessant projects of extension and enlargement ought to be restrained, or evils will arise of which the caterers for popular applause are little aware.

The proposed addition to the judicial power of the *House of Lords* will be noticed in a separate article, and the Bill as amended in Committee will be found in a subsequent page. The salary of the proposed new Law Lords should not be less than 6,000*l.* a year, as the Select Committee recommended. The salary of the Master of the Rolls and the Lords Justices are of that amount, and the Lords in the highest Court of Appeal ought not to receive less. We trust that this provision, which belongs peculiarly to the House of Commons, will be set right here.

The contested Bill as to *County and Borough Police* has at length passed the House of Commons, and has been read a first time by the Lords. Being a Government Bill, it may be expected to pass; yet many of their Lordships take an active interest in the police management of the several localities in which their estates are situate, and notwithstanding the alterations made in the Commons, there may be still further amendments.

We regret to hear that Mr. Colville has been induced by the members who oppose some of the provisions in his *Justices of*

*the Peace Bill*, to withdraw it; and the obnoxious exclusion of Solicitors from the County Magistracy remains as before. It will be recollected that on the 2nd reading several members supported the amendment proposed on behalf of the Profession, and that when the Bill was in Committee the clause was not arrived at. The Bill, however remains on the List of the House of Commons.

The following classification of the Bills pending before the two Houses, will show the stages at which they have arrived, and the general subjects to which they relate:

#### Royal Assents.

Annuities.  
Bankers' Compositions.  
Fire Insurances.

#### LAW OF PROPERTY.

Settled Estates.—Passed the Lords, and stands for 2nd reading in the Commons, June 9.

Married Women's Reversionary Interest in Personal Property. Passed the Commons. For 2nd reading in the House of Lords.

Charitable Uses. Passed the Commons. For 2nd reading in the Lords, June 19.

Drafts on Bankers. Passed the Commons. For 2nd reading in the Lords.

Church Rates. In Committee.

Advowsons. In Committee.

Specialty and Simple Contract Debts. For 2nd reading.

Drainage Act Amendment. In Select Committee of the Lords.

Tithe Commutation. In Select Committee of the Commons.

#### COURTS OF LAW AND EQUITY.

Appellate Jurisdiction of the House of Lords.—Lord Chancellor. For 3rd reading.

Ecclesiastical Courts.—Solicitor-General. For 2nd reading.

Judgments Execution.—Mr. Craufurd. For 2nd reading, July 2.

Procedure and Evidence.—Sir F. Kelly. In Committee.

County Courts Amendment. In Committee.

Divorce and Matrimonial Causes. In Select Committee of the Lords.

Bankruptcy (Scotland). In Committee.

#### MERCANTILE AND COMMERCIAL LAW.

Mercantile Law Amendment. In Select Committee of the Lords.

Law of Partnership. In Committee, June 9.

Joint-Stock Companies. Passed the Commons. For 2nd reading in the Lords.

Joint-Stock Companies Winding-up. Passed the Lords. For 2nd reading in the Commons.

#### CRIMINAL LAW AND JURISDICTION OF MAGISTRATES.

Trust Property Misappropriation. [Not yet printed.]

**County and Borough Police.** Passed the Commons.

**Qualification of Justices of the Peace.** In Committee.

**Public Prosecutors.** In Select Committee of the Commons.

**MISCELLANEOUS BILLS.**

**Shipping Tolls.** In Select Committee (Commons.)

**Marriages in Scotland.** For 3rd reading.

**Clergy Discipline.** For 2nd reading.

**Poor Removal.** For 2nd reading.

**Formation of Parishes.** In Committee.

**Oath of Abjuration.** In Committee.

**Sleeping Statutes Repeal.** Passed.

**Judicial Statistics.**

**Public Health.** For 2nd reading.

**Ecclesiastical Judges and Chancellors.** For 2nd reading.

**Burial Acts Amendment.** For 2nd reading.

**London Corporation.** For 2nd reading.

**Medical Profession.** In Select Committee.

**APPELLATE JURISDICTION OF THE HOUSE OF LORDS.**

THE House of Lords being the highest legal tribunal in the kingdom, and the Court of ultimate resort, it is eminently desirable that its judgments should command the confidence both of the Public and of the Profession. Questions involving an immense amount of property, the happiness of families, the character, the liberty, and even the lives of individuals are cognizable by that august tribunal; and it is consequently of the last importance that the judicial functions of the House should be exercised by the greatest legal intellects of the country.

We believe, notwithstanding the occasional objections of some disappointed litigants, that the judgments of the House of Lords on Scotch appeals have given almost universal satisfaction. However plausible the theory that questions of Scotch law should be decided by Judges familiar with that form of jurisprudence, the fact is not the less certain that the eminent individuals who have directed the judgments of the Supreme Court, have brought an amount of judicial learning to bear upon the questions submitted to them which has cast new and important light on some of the most intricate points of law, carrying at the same time conviction to the minds both of the suitors and of the public. Much caution therefore is required in dealing with a system which has wrought so well in practice; and it will be matter of lasting regret if the report of the present committee shall lead

to any organic change in the constitution of the august Court.

The persons examined as witnesses from Scotland consisted chiefly of those who either had already reached the judicial seat, or who expected at no distant day to do so. Such persons would naturally be partial to the judgments of a Court of which they themselves either were or expected to become members. It cannot be very palatable to the Judges of the Court of Session to find their decisions so frequently reversed by the House of Lords; and with an almost excusable self-complacency they may suppose that such reversals are rather owing to a want of knowledge of the Scotch law on the part of the Judges of last resort, than to any defect in the judgments themselves. The community, however, have little sympathy with such feelings. They believe that in so far as the judgments of the inferior Courts are reversed, the law is in most cases magnified and ameliorated. Yet to the evidence of parties connected with the Court of Session must be ascribed all that is objectionable in the present report. Of what are called "the principal objections raised by the witnesses against the present constitution and practice of this ultimate Court of Appeal," the third is thus stated—"that the administration of Scotch law has been at times unsatisfactory from the want of familiarity with the Scotch law, consequent upon the Law Lords being exclusively English Judges." No doubt this is merely the opinion of the persons examined from Scotland; but it is an opinion which we believe is not shared in by the public generally. We cannot believe that there is anything so abstruse and recondite in the principles of Scotch law as to be beyond the reach of minds of the greatest judicial grasp. But if the want of familiarity with the Scotch law is a good objection to English Judges, how does it happen that in every appeal case from Scotland the interests of the litigants on both sides are invariably committed to English counsel? There is not a case from that part of the kingdom at the present moment in which the Solicitor-General of England, Sir Richard Bethell, is not engaged, and we have never yet heard that he or any other English Barrister finds any difficulty in mastering even the most complex and abstruse principles of Scotch law.

The Committee, in treating of the mode in which appeal cases should be disposed of, state that considering the importance of the causes brought to this ultimate Court of

Appeal, the House should as a general rule be able to reckon on the attendance of not less than *three* Law Lords to assist in the hearing of all appeals. There may not be equal unanimity in regard to the mode in which it is proposed to attain this object:—"The Committee are of opinion that the attendance of others equally qualified to sit with those peers in judgment on the decision of the inferior Courts would be best secured by the creation of other high legal offices in connexion with the House of Lords, with such salaries as would secure their acceptance by the most eminent Judges. The Committee are therefore of opinion that it is desirable that two offices should be created, to be held by two Law Lords, whose duty it should be to assist the House in the performance of its judicial duties; and they accordingly recommend that her Majesty should be empowered to appoint two lords to be deputy speakers of the House of Lords, with salaries attached to their offices." It is also recommended that persons who have held some high judicial office in the United Kingdom, for not less than five years, should alone be eligible for these appointments. And it is proposed that the salary attached to the office shall be 6,000*l.* per annum.<sup>1</sup>

In referring to the subject of Scotch appeals, in connexion with the proposed changes, the Committee, whilst stating that nearly all the witnesses have admitted that very material advantage has been derived by Scotland in the course of the administration of the law by the House of Lords, say—"It appears to the majority of the *Bar* and the *writers of the signet* in Edinburgh, are in favour of one of the members of this Appellate Court being a *Scotch lawyer*."—But they add—"It is not proved that this is the opinion *either of the mercantile classes, or the community at large in Scotland*." It is important to observe how this point is disposed of—"The Committee are of opinion that no fixed or invariable rule should be adopted on this subject.

Now under this apparent caution it is not difficult to discover what is really contemplated. The salary is fixed at a sum which will make it an object even for the head of the Scotch Court to accept of the appointment. Mr. Macneill, the present President of the Court of Session, is unquestionably one of the ablest Scotch lawyers of his time, and perhaps the only Judge of that Court who would have any chance of being translated to the House of

Peers. He was the Lord Advocate in 1851, under Lord Derby's administration, and on the retirement of Lord President Boyle, was promoted at one step to his present position. His salary as Lord President and Lord Justice General is 5,500*l.* Were he promoted to the House of Lords, Mr. Moncrieff, the Lord Advocate under the present Ministry, would as a matter of professional right, be promoted to his place. This may serve to explain how both the great political parties concur in the recommendations of this report. But the important question for the country to consider is, how far the interests of the public will be served? Scotland will be deprived of its best Judge whom it can but ill spare; while the appeal business of the House of Lords will be virtually handed over to him. It can scarcely be supposed that when a Judge trained to the Scotch law, and owing his appointment to that circumstance, is present, the other eminent Law Lords will trouble themselves about Scotch appeals. The practical effect of the change, therefore, will be to make the Scotch Law Lord the sole Judge in Scotch appeal cases—a result which we would consider anything but an improvement on the present system. Indeed it would be infinitely better, and much less expensive to create a new Chamber in the Court of Session, in which the present Lord President might exercise appellate jurisdiction. This would at least simplify the proceedings, and save the litigants both the trouble and expense of carrying their causes to London, merely to be adjudicated upon by a Scotch lawyer.

[We are indebted for the preceding observations to a Northern Correspondent, whose communication, however, we have ventured to abridge; and in the next page will be found the Bill for carrying the Report of the Select Committee into effect.]

#### APPELLATE JURISDICTION BILL.

THIS Bill, "to make better Provision for the discharge of the Appellate Jurisdiction of the House of Lords," recites that it is expedient to secure the regular attendance in the House of Lords during the hearing of appeals and writs of error of an increased number of peers who have filled high judicial offices, and therefore proposes to enact:—

1. It shall be lawful for her Majesty by letters patent under the Great Seal of the United Kingdom, to appoint two persons, qualified as hereinafter-mentioned, to be deputy speakers of the House of Lords, to as-

<sup>1</sup> The Bill proposes only 5,000*l.* a-year.

assist in the judicial business of the said House, and every such deputy speaker shall hold his office during good behaviour: Provided always, that it shall be lawful for her Majesty to remove any such deputy speaker from his office upon the addresses of both Houses of Parliament.

2. No person except hereditary peers shall be qualified to be appointed deputy speaker under this Act who shall not have held for a period of five years or upwards, or for periods amounting together to five years or upwards, any one or more of the judicial offices following, viz., Lord Chancellor of Ireland; Master of the Rolls in England; Master of the Rolls in Ireland; Lord Justice of the Court of Appeal in Chancery; Vice-Chancellor (in England); Judge in any of the Superior Courts of Law at Westminster or in Dublin; Judge of the Court of Sessions in Scotland; Judge of the High Court of Admiralty of England; Judge of the Prerogative Court of the Archbishop of Canterbury.

3. There shall be payable to each such deputy speaker the yearly salary of 5,000*l.*, or such a yearly sum as with any pension, retiring allowance, or compensation to which he may be entitled in respect of any office formerly held by him, will make up a yearly sum of 5,000*l.*; and such salary or yearly sum shall be payable out of the Consolidated Fund of the United Kingdom by quarterly payments, free of all deductions, except income tax, on the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year, such salary or yearly sum nevertheless to grow due from day to day, and to be subject to apportionment at the commencement and termination thereof accordingly.

4. It shall be the duty of the said deputy speakers, unless prevented by illness or other sufficient cause, to attend the House of Lords during the hearing and decision of appeals and writs of error.

5. It shall be lawful for her Majesty, by letters patent under the Great Seal of the United Kingdom, to grant to any person holding the office of a deputy speaker of the House of Lords under this Act an annuity for his life, not exceeding 3,750*l.*, to commence immediately after his resignation of such office, such annuity to be paid out of the Consolidated Fund of the United Kingdom, free from all deductions whatsoever, except income tax, by quarterly payments on the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year, such annuity nevertheless to grow due from day to day, and to be subject to apportionment at its commencement and termination accordingly: Provided always, that in case any person to whom any such annuity is granted hold at any time any other pension or office of profit under her Majesty, then while such person holds such pension or office such annuity shall if the annual amount of the profits of such pension or office be equal to such annuity, cease to be

paid; and if the annual amount of such profits be less than such an annuity, then no more of such annuity shall be paid than will, with the annual amount of such profits, make up the annual sum of 3,750*l.*: Provided also, that no such grant of an annuity shall be valid unless such person have held the office of deputy speaker for the period of 15 years, or have held such office and any of the judicial offices hereinbefore-mentioned for periods amounting together to 15 years, or be affected with some permanent infirmity disabling him from the due execution of his office of deputy speaker, which shall be distinctly recited in the said grant.

6. If her Majesty by her letters patent shall have granted or shall hereafter grant a peerage for life only to any person who shall be appointed Lord High Chancellor of Great Britain or deputy speaker under this Act, such person, on receiving the appointment of Lord High Chancellor of Great Britain or of deputy speaker under this Act, shall be entitled to sit and vote in the House of Lords, and to have and enjoy all the rights and privileges of a Peer of Parliament during his life, if there are not more than three other persons having seats in the House of Lords as peers for life only at the time he shall be so created: Provided always, that not more than four persons shall have seats in the House of Lords at one time as peers for life only: Provided also, that if any person to whom a peerage for life only shall have been granted shall inherit or receive a patent for an hereditary peerage, he shall not be reckoned as one of the peers having a seat in the House of Lords for his life only.

7. For disposing of any appeals or writs of error which may remain undisposed of at the end of any Session it shall be lawful for the House of Lords to sit and act during the Prorogation of Parliament; and all orders and proceedings of the said House in relation to appeals and writs of error, and the matters connected therewith, during such prorogation, shall be as valid and effectual as if Parliament had been then sitting; provided that the times of such sittings during the prorogation or the time of the first meeting of the House for that purpose be appointed by order of the House during the Session of Parliament; and that no business other than the hearing and determination of appeals and writs of error, and the matters connected therewith, shall be transacted by such House during such prorogation.

8. Nothing in this Act shall in anywise abridge or affect the right of her Majesty to appoint deputy speakers of the House of Lords, but such deputy speakers may be appointed from time to time in the same manner and with the same rights and authorities as if this Act had not been passed, and shall, unless her Majesty shall otherwise direct, have precedence of the Deputy Speakers appointed under this Act.



## AMENDED OATH OF ABJURATION BILL.

1. THE oath of abjuration and the assurance as set forth and prescribed in the said Act, or as set forth and prescribed in any previous Act or Acts, and the affirmation instead thereof as prescribed by an Act passed in the 3 & 4 Wm. 4, c. 49, intituled "An Act to allow Quakers and Moravians to make Affirmation in all Cases where an Oath is or shall be required," shall not from and after the passing of this Act be required to be taken, subscribed, or made upon any occasion or for any purpose whatsoever.

2. In lieu of the oath of abjuration and of the assurance set forth and prescribed by the said recited Act or any other Act, the following oath shall be substituted, which shall be intituled "An Oath for securing the Protestant Succession to the Crown as by Law established," and shall be in the words following; that is to say,

"I A. B. do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the Crown, which succession, by an Act intituled 'An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject,' is and stands limited to the Princess Sophia, Electress and Duchess Dowager of Hanover, and the heirs of her body, being Protestants. So help me GOD."

And every statutory enactment now in force with respect to the oath of abjuration or the assurance hereby abolished shall henceforth apply to the oath hereby substituted, in the same manner as if such last mentioned oath had been expressly mentioned or referred to in and by such statutory enactments instead of the oath of abjuration and the assurance hereby abolished.

3. Every person permitted by the said Act of his late Majesty King William the Fourth to make his affirmation instead of the oath of abjuration and assurance shall in lieu of the oath hereby substituted, and of the affirmation contained in the last-mentioned Act, make his solemn affirmation in the following words; that is to say,

"I A. B., being one of the people called Quakers [or, one of the persuasion of the people called Quakers, or of the United Brethren called Moravians, as the case may be], do solemnly promise, That I will be true and faithful to the succession of the Crown, which succession, by an Act intituled 'An Act for the further Limitation of the Crown, and the better securing of the Rights and Liberties of the Subject,' is and stands limited to the Princess Sophia, Electress and Duchess Dowager of Hanover, and the heirs of her body, being Protestants."

## LAW OF ATTORNEYS AND SOLICITORS.

### DELIVERY OF BILL OF COSTS.—LAPSE OF NEARLY SIX YEARS.

It appeared that in November, 1848, a person named Wilson retained Mr. Edward Vann as his attorney to defend him against a charge preferred at the Worship Street Police Court for criminally assaulting a female child of tender years; and that Wilson requested him to keep no record or memorandum of the business, and that no entry should be made nor account kept touching anything which might be done in relation to the charge. Wilson also requested Mr. Vann not to allow any of his clerks to know anything of the matter, and stated that he did not wish for any account or explanation as to what might be paid by Mr. Vann to the friends of the child, or their attorney, but requested to be allowed to place in his hands a sum of money to do the best he could with it on his behalf.

Mr. Vann deposed in his affidavit that Wilson placed in his hands a sum of 200*l.* wherewith to pay, satisfy, and discharge all the costs, charges, and expenses of his defence against the said charge, and also all the moneys which it might be necessary to pay in order to free him from the said charge, or to induce the friends of the child to forego any action for damages for the alleged assault; and that he then agreed with Wilson to receive and did receive from him the said sum of money, and then agreed to bear the said Wilson harmless from all costs, damages, &c., in relation to his defence and his liberation from the said charge. Mr. Vann then went on to say that it was then agreed at the express request of Wilson that no account in writing or otherwise was to be kept or rendered by him to Wilson of any costs, charges, disbursements, or expenditure relating to the said defence, or the liberation of Wilson from the said charge, or of the said sum of money; that he did afterwards apply and dispose of the said sum of money for Wilson's benefit in accordance with the terms upon which he received it. Ultimately Mr. Vann succeeded in procuring the prisoner's discharge and obtaining a compromise from the parents of the child. He kept no record or memorandum of the transaction nor was any entry made nor account kept by him respecting the same. After the lapse of nearly six years Wilson obtained a rule for the delivery by Mr. Vann of his bill of costs.

*Jervis, C. J.*, said:—"An attorney ought

to take advantage of the difficult position in which his client is placed, to extort from him such a bargain as this. I think Mr. Vann ought to furnish, not a technical bill of costs, but such a general account of the money he has expended on behalf of Wilson as the Master may think that under the peculiar circumstances he ought to give. The attorney, one would expect, would be glad of an opportunity to explain such a transaction. Let the whole matter go to the Master and let him dispose of it."

The rest of the Court concurring, and the parties consenting, the rule was referred to the Master, who, in the result, was so far satisfied with the accounts given by Mr. Vann, that he directed the rule to be discharged; but he declined to allow Mr. Vann his costs. *In re Vann*, 15 Com. B. 341.

## QUESTIONS AT THE EXAMINATION.

Trinity Term, 1856.

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. Give a brief account of the concurrent and exclusive jurisdictions of the three Superior Courts of Law.
6. What step must be taken by a party desiring to proceed in an action, in which there have been no proceedings for one year from the last proceeding had? Is a summons without an order a proceeding; or a notice of trial although countermanded?
7. What is the rule as to costs (excluding the County Court Acts) when a plaintiff recovers or takes out of Court a sum not exceeding 20*l.* in actions on contract?
8. What does the plea of Not Guilty operate as a denial of, in actions for torts?
9. In what time are simple contract debts barred by the Statute of Limitations? and how are they taken out of the operation of the Statute when it has begun to run?
10. How do you proceed in case of the death of a sole plaintiff or surviving plaintiff?
11. State, shortly, the leading distinctions between simple contracts and contracts under seal.
12. Who is usually the right party to bring an action on a bill of lading?
13. What is a concurrent writ of summons? when may it be obtained, and how long is it in force?

14. What is the difference to the plaintiff of being nonsuited, and having a verdict found for the defendant?

15. State the conditions of profit and loss necessary to constitute a partnership as between the members of a firm, and to create liability as to third persons?

16. When does distress for rent lie?

17. What is the law as to proving any instrument by the attesting witness? and has there been any recent alteration in it?

18. At what time during the continuance of the tenancy may a good notice to quit be given, in the case of a yearly, and of a monthly, or weekly tenancy; there being no special agreement or usage affecting the rights of the parties?

19. What are the respective rights to contribution among co-defendants after judgment recovered against them, in actions of contract, and of tort?

### III. CONVEYANCING.

20. State the different kinds of estates in lands and hereditaments.

21. Land is devised by will or limited by deed to A. for life, with remainder to his heirs,—what estate does A. take?

22. What are the requisites to produce a merger of an estate?

23. Explain the doctrine of estoppel.

24. Give instances of legal and equitable estates respectively.

25. What are the several kinds of property, and the distinctions in transferring each?

26. What are emblements? and has there been any, and what, recent alteration in the law relating thereto?

27. Describe the mode of proceeding to obtain an enfranchisement of copyhold property.

28. What are the usual covenants in a farming lease?

29. What breaches of covenant in a lease will operate as a forfeiture, and has the lessee any, and what, relief in equity, on any, and what, terms in regard to any, and which, of such breaches of covenant?

30. On the purchase of a freehold estate, what are the duties of the solicitor for the purchaser, in the investigation of the vendor's title and the completion of the purchase?

31. What should be particularly regarded on the execution of deeds, whether ordinarily, or under a power of attorney, or in execution of a power of appointment?

32. What deeds should be registered or enrolled, and when, and where?

33. Who may make a will, and what are the requisites to give it validity as to its form, execution and attestation?

34. How can a will be altered after its execution by the testator, and how can it be revoked altogether?

### IV. EQUITY AND PRACTICE OF THE COURTS.

35. If real estate be devised upon trust for sale for a particular purpose, and that purpose either wholly fail, or do not exhaust the pro-

ceeds of the sale, will the part that remains unapplied (whether the estate has been actually sold or not) result to the heir-at-law, or go to the next of kin of the testator?

36. When property is purchased by a parent in the name of his child, and the child dies in the lifetime of such parent, to whom will such property go?

37. When is a purchaser of land, sold by trustees for sale under a will not containing an express power to the trustees to give receipts for the purchase-money, not bound to see to the application of the purchase-money?

38. What is the meaning of a "wife's equity to a settlement," and what property does it apply to?

39. What is the meaning of a "fraud upon marital rights?"

40. What is the rule of equity with respect to gifts to persons in a confidential *fiduciary* or other relation towards the donor?

41. State some of the persons who are considered to fill the confidential fiduciary, or other relation referred to in the last question.

42. What right have remaindermen and reversioners to have the title deeds, being in the hands of the legal tenant for life, secured, and when will such right be enforced?

43. In what cases and under what circumstances may a *written* copy of a bill be served upon a defendant? (15 & 16 Vict. c. 86.)

44. In what manner, and against whom, is the production of documents in a suit according to the modern practice obtained? (15 & 16 Vict. c. 86.)

45. How may a defendant obtain discovery from a plaintiff without filing a cross-bill? (15 & 16 Vict. c. 86.)

46. What is the rule with respect to facts deposed to in an affidavit when the facts are within the deponent's own knowledge, and when the knowledge of them is derived from information obtained from others? (8th & 9th Orders of 13th January, 1855.)

47. Is it necessary to give any notice with respect to whether the evidence in a suit is to be taken orally or by affidavits? (4th Order of 13th January, 1855.)

48. What are the steps to be taken in enforcing an order by "process of contempt?"

49. How should a suit be commenced when it is necessary to apply for an injunction?

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. What are the objects, effect, and advantages of the Bankrupt Laws of this country?

51. In what way, and by what acts or omissions, and under what state of circumstances, does a man become liable to be declared a bankrupt?

52. Describe the mode of proceeding to obtain an adjudication of bankruptcy against any one.

53. What is the name of the Judicial authority that decides in the first instance in declaring a party bankrupt, and what appeal or appeals lie from that decision, and in what cases?

54. Who are allowed to be legal practitioners in the Courts of Bankruptcy, and how is it right to practice there obtained? Describe the rights of various descriptions of practitioners.

55. What means are there of compelling an insolvent trader to render himself liable to be adjudged a bankrupt?

56. Is an assignment by a trader, in insolvent circumstances, in any case valid as against a bankruptcy? And if so, in what cases, and by what means, or after what period, does it become not liable to be invalidated?

57. What is the effect of a certificate in bankruptcy, and by whom, and when, is it granted?

58. In what cases does the obtaining a certificate authorise the discharge of the trader from custody?

59. Under what circumstances, or after what periods, do any transfers or other acts, executed or done by a trader in insolvent circumstances, become not liable to be invalidated by bankruptcy?

60. Are there any, and what, limits of time, after acts committed, within which proceedings towards adjudication in bankruptcy should be taken? Specify the various Acts and the times prescribed.

61. Describe the sort of cases which may occur of the property of another, being in the order and disposition of an insolvent trader, and the consequences of such a state of circumstances, in case of bankruptcy. Give instances.

62. Are there any, and if any, what, instruments or acts executed or done by a trader which would be void as against his assignees, unless some, and what, precautions were taken to protect or give validity to them? Describe the cases, and the necessary steps to be taken.

63. What effect has a certificate in bankruptcy on a commitment by a County Court Judge for not obeying an order of that Court?

64. What is meant by reputed ownership? Describe the sort of cases where it may occur or come in question, and the effect of it.

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. What, in our Law, is the distinction between crimes and civil injuries?

66. State the difference between a principal in the first degree and in the second degree.

67. Are all accessories equally guilty with respect to the crime committed by the principal? and mention any crime in which there is no accessory, but all the parties are accounted principals.

68. Define homicide; and give instances of justifiable homicide, and excusable homicide.

69. What is the crime of arson, and is there any, and what, punishment for persons negligently setting fire to houses?

70. Define larceny; give the derivation of the word. May larceny be committed as to a thing of which the owner is unknown?

71. What is the punishment inflicted upon a person receiving stolen goods, and by what Statute is the offence made felony?

72. Define forgery. Is any material alteration in the forged instrument forgery as well as the entire fabrication?

73. In what does compounding of felony consist, and what is the punishment for the offence?

74. Describe common barratry—maintenance—and champerty.

75. What is conspiracy, is it necessary to perfect this crime that the act contemplated should have been accomplished?

76. What is an indictment, before whom is it preferred, and by whom is it tried?

77. What is the process upon which the accused party is taken into custody?

78. What is the mode in which a prisoner is arraigned, and by what Statute is it that the trial for treason or felony proceeds should the prisoner refuse to plead?

79. May the accused person plead to the jurisdiction—demur—or plead in abatement? if so, describe the nature and effect of each mode of defence.

## LEGAL EDUCATION.

To the Editor of the Legal Observer.

### REDUCTION OF DUTY ON ARTICLES.

SIR,—I must claim your indulgence once more to make a short reply to some of the observations of your very intelligent correspondent B., in your last number.

I think the points on which we agree are considerably more numerous than those on which we disagree. As far as I am able to judge your correspondent's views, he is equally anxious with myself to maintain the respectability of the Profession, whilst every encouragement is afforded to the meritorious and industrious clerk, and we only differ as to the means of attaining that end. We are both favourable to increasing the qualifications of those claiming admission, but whereas I am for retaining the present stamp duty on articles, and at a future time, when the burthen of the late war has ceased, for the removal of the certificate duty, your correspondent seems desirous to reduce the stamp upon articles to an insignificant amount, which will neither afford security to the Public nor satisfy the Profession of the worth and respectability of the aspirants. And, indeed, B.'s arguments are rather damaging than otherwise to his cause, for if law clerks are so demoralized and worthless as he would fain have us believe (though I have not found them so), what permanent advantage can we or the public derive from affording them facilities to become members of the Profession? Surely it would be the greatest inducement possible for the Incorporated Law Society and the Legislature to withdraw the attorneys from so contaminating an influence!

It is true, B. attributes the depravity of the law clerks (a depravity which he must bear in mind I do not admit) to the unfair position in which he considers them placed. In fact his

argument is "give a dog a bad name and you may as well hang him," in other words, the clerk's position is such that he loses confidence, rejects industry, morality, and honour, and sinks from bad to worse, utterly indifferent to the social position of himself or his family, from despair of ever improving his condition. But is this the case amongst the poor of other classes? and is it the case amongst the law clerks? I say no. There is an excellent society which is deserving of the cordial support of the Profession, and which numbers very many of this depraved (?) body—I mean the United Law Clerks' Society. Is this evidence of immorality, irreligion, and neglect of social ties? If the law clerks can show us that they have done this for themselves they cannot be *en masse* deserving of so wide a censure as B. casts upon them in the warmth of his arguments. But in defending the law clerks I am liable to stray from the purpose for which I took up my pen—I can leave them to find a more worthy advocate for themselves than I can pretend to be.

Your correspondent having been arguing for some time against the burthens to which law clerks are subject in this attempt to elevate themselves, suddenly changes his tone and asserts that "every instance of advancing ordinary clerks to the position of those who have been regularly articulated—who have defrayed the expenses themselves and served five years without salary, and, perhaps, paid a premium—is certainly an injustice." I do not see it in this light—I would hail with pleasure the elevation of an "ordinary clerk," though he has paid no premium, if he were deserving of it. And it is because I think that the worthy men of that class may hope for this, and work and toil for this, that I would wish the stamp duty on articles should remain as it is, to keep out the idle and the worthless and to encourage the good.

As to intellectual qualifications, your correspondent and myself never disagreed, and I should not have attempted to have written a line had I not supposed that his object was to lay before you and your readers what he considered the pecuniary burthens on law clerks—burthens which, whatever may be the opinion of others, I cannot help thinking, have been wisely imposed by the Legislature. L.

## LEGAL EXAMINATION.

UNDER "Questions for Examination" in *Easter Term*, we find a specimen of the ordeal the young lawyer has to undergo previous to being allowed to enrol his name on the list of attorneys. The felicitous 77 who passed, we may suppose reposing under mutual felicitations on the event; and the 11, whose less fortunate stars ordained their "postponement" to a later season—we will not suppose at all;—but for those that have passed—they have been required to compress the reading and experience of five years into as many hours, by a process, it seems, of even more minute condensation than

the Florentine cook, who told his master that he could (the word given) put 100 hams into anything the size of a walnut. They have had five papers put before them at one time, containing (inclusive of preliminary questions) 79 questions, several of which questions are subdivided, and some as this, for instance—"Some account of the equitable jurisdiction of the Court of Chancery, and from whom was it borrowed,"—not answerable well and clearly under at least between a quarter or half an hour; but none of them are of such a difficult nature but that a man who has applied himself with good abilities and perseverance to his book might be able to give some answer to them; but to *write down* the answer thereof, the wisdom of Eldon were but as nothing, could he not establish an electric communication between his brain and paper, or were allowed to put down the answers in short-hand.

We have heard a story, which we ourselves had of one of the parties, of two professional mathematicians taking one of the mathematical papers at Cambridge, in order to see in how short a period it might with certainty be done by a man of experience and knowledge; the result was, one finished the *morning* task in six weeks, the other is still in uncertainty, never having finished it. What would be the issue of a like experiment on the five papers before us?<sup>1</sup> Now, the end of an examination ought not, we opine to be this,—to find out what the examinee knows from the hurried and crude answers he can write down in six hours to 79 questions, but to give him such questions, and in such number, as will afford him an opportunity of showing what he knows clearly and distinctly on each head; and for this purpose, either to shorten the number of questions so as to admit of his giving out his knowledge on these points, not at diffuse length, but explicitly, and with distinctness, or if the 75 questions must still be given, let them be given part one day and part another.

It reduces the anxiety and apprehension of an examinee to this, lest he should by some strange fatality in the hurried moments not be able to show what he does know, and therefore, being naturally anxious to write down all he does know, and on reading over the paper, thinking he can answer most of the questions, and knowing that as, "*in jure non creditur nisi juralis*," so where written answers are required *non creditur* except to writers, and that it may be supposed he is utterly ignorant of what he does not answer, hurries blindly along, and very frequently gives wrong or indifferent answers to all the questions he is able to touch on, answering few badly, where with time for consideration he might have answered all well, till "*spatium contractius usque violentem ire velat*," and he is obliged to show up his paper with all the marks of haste and want of thought, unfinished and unfit, and after this

he has no opportunity in *visâ voce* as at Oxford or Cambridge examinations, of retrieving his lost honours or explaining his ambiguous phrases. Might not some remedy be found for this? Might not the examination extend over two days? or a *visâ voce* examination,<sup>2</sup> allow of some of the questions untouched on being afterwards proposed to, and explained by him, whom nothing but an unfortunate want of sufficient quickness of writing prevented answering satisfactorily. S—x.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

[Concluded from page 95.]

### LIST OF PLACES WHERE SEARCHES FOR INCUMBRANCES OUGHT TO BE MADE, AND PROBABLE EXPENSE.

Deeds and Wills.—Middlesex, Northallerton, Beverley, or Wakefield.—1 guinea and 2s. 6d. fee.

Judgments, Crown Debts, Lis Pendens, Rent Charges, and Annuities.—Common Pleas Office.—1*l.* 13s. 4d. and 1s. fee.

Or Judgments.—Preston, for County Palatine of Lancaster; or Durham, for County Palatine of Durham.—13s. 4d. and 1s. fee.

Bankruptcy.—Basinghall Street.—13s. 4d. and 1s. fee.

Insolvency.—Portugal Street.—13s. 4d. and 1s. fee.

County Court Judgments. — Parliament Street.—13s. 4d. and 1s. 6d. fee.

Annuities under the Old Act.—Inrolment Office, Chancery Lane.—13s. 4d. and 1s. fee.

of 1856.

DEAR SIR,

In the matter of the purchase of

As the purchaser of the above property, and being desirous of saving expense, and feeling satisfied that searches for

against may, in this case, be omitted with safety, I hereby authorise you to dispense with those searches.

I am, DEAR SIR,

Yours truly,  
C. D.

To Mr. G. H.

*Criminal Justice Bill.*—In the Criminal Justice Act, which received the Royal Assent on the 14th August last, the Committee made a strong, though unsuccessful, effort to obtain the introduction of a clause enabling a prisoner in criminal cases to substitute for the plea of "Not Guilty," a plea that he wishes to be tried.

*Justices of the Peace Qualification Bill.*—The active exertions of the Committee have also been directed to the Justices of the Peace

<sup>1</sup> We understand that all, or nearly all, the questions have been well answered within the time.

<sup>2</sup> The regulations of the Judges require the examination to be conducted by written or printed questions. How could there be an appeal from an oral examination?—Ed.

**Qualification Bill.** The Committee consider that this is, in general, a useful Bill; but it contains, as drawn, a clause declaring attorneys, solicitors, and proctors, disqualified from being justices of the peace for counties. The Committee feel that this is not only a stigma on a large, influential, and respectable body of practitioners, but also an injury to the public, by excluding those who, from their legal knowledge and habits of business, are peculiarly qualified to be in the commission of the peace. They have, therefore, drawn a petition, praying that this clause may be omitted, and another substituted, declaring that attorneys, solicitors, and proctors shall not, while in the commission of the peace, practise in general or petty sessions, or in the prosecution or defence of any prisoner accused of any criminal offence, under a penalty of 50*l*. This petition has been presented to the House of Commons by Mr. Hadfield. The Committee have also, in conjunction with the Committee of the Yorkshire Law Society, drawn the clauses proposed to be substituted, which Mr. Hadfield has undertaken to move. This Bill was presented on the 13th of February, and was read a second time on the 27th of February. It is committed for this day.

**Consolidation of the Statutes.**—The question of the Consolidation of the Statutes has also engaged the attention of the Committee; on which they have had submitted to them, by one of the most active of the provincial members of their body, the draft of a petition to both Houses of Parliament. The Committee, however, have not yet formed a decided opinion as to the best mode of obtaining this most desirable object. The subject is one of very great importance and considerable difficulty, and will receive the careful attention of the Committee.

**Bills in Parliament.**—Fifty-one Law Bills have been introduced into Parliament this Session, and read a first time; twelve in the House of Lords, and thirty-nine in the House of Commons.

The Leases and Sales of Settled Estates Bill, presented by the Lord Chancellor, has been already noticed.

A short Bill, presented by the Lord Chancellor, to enable the Court of Queen's Bench to order certain offences to be tried at the Central Criminal Courts, has passed both Houses, and received the Royal assent.

A Mercantile Law Amendment Bill has also been presented by the Lord Chancellor, entitled "A Bill to amend the Laws in England and Ireland relating to Trade and Commerce." The object of this Bill is to assimilate the Law of England, Scotland, and Ireland, in commercial matters. It consists of 22 sections, some of them of very considerable importance, and will receive the careful attention of the Committee. It has been read a second time, and referred to a Select Committee, which has not yet made its report.

The Bill to legalise Marriages with a Deceased Wife's Sister, or with a Deceased Wife's

Niece, has this year been introduced into the House of Lords by Earl St. German's and stands for the second reading for the 17th instant.

A Bill for better enforcing Church Discipline and the Laws Ecclesiastical, and for the establishment of Ecclesiastical Registries at London or Westminster, and at Dublin, was presented by the Lord Chancellor on the 14th of March, on which day it was read a first time. The object of the Bill is to regulate the constitution, jurisdiction, and practice of the Provincial and Diocesan Courts, and to establish Ecclesiastical Registries.

The County Courts Bill has been already alluded to. It was read the first time on the 11th of March, and no day has yet been fixed for the second reading.

A Bill to transfer the Jurisdiction in Matrimonial Causes, and to establish a Court of Divorce, was presented by the Lord Chancellor on the 11th instant. This Bill determines the jurisdiction of the Ecclesiastical Courts in Matrimonial Causes, and constitutes a new Court, to be called the Court of Divorce.

It regulates the constitution, jurisdiction, procedure, and practice of the Court, in which attorneys and solicitors are to be allowed to practice. A divorce pronounced in this Court is to be final, unless within three months an appeal is presented to the House of Lords. It is a valuable Bill, and should have the support of the Profession. It contains 52 sections. No day for the second reading has been named.

A Bill was presented by the Bishop of Exeter on the 11th instant to regulate the proceedings in the case of clerks in holy orders offending against the laws ecclesiastical. This Bill also is waiting for a day to be appointed for the second reading.

A Bill to amend the Law of Partnerships was introduced on the 1st of February by Mr. Lowe, and was read a second time on the 8th of February, and committed for the 25th of February. It was, however, after several adjournments, withdrawn on the 10th of March.

A new Bill bearing the same title was presented by the same gentleman on the 7th inst. The Bill is short, but the enactments contained in it are important. It is not to extend to the business of a banker; and provides that in certain specified cases the reception of a portion of the profits shall not constitute a partnership.

A Bill, entitled, "A Bill for the Incorporation and Regulation of Joint-Stock Companies and other Associations," has also been presented by Mr. Lowe. It was read a second time on the 8th of February, and stands committed, after various adjournments, for the 18th instant. This Bill regulates the constitution and incorporation of companies, their management and administration, the examination of their affairs, and provides for their winding-up, and the establishment of official liquidators. It contains 108 sections, and a long schedule of tables and forms, and is a Bill of very great importance.

A short Bill to amend the Acts relating to

the Metropolitan Police has passed both Houses. The principal feature is the provision that in future there shall be only one Chief Commissioner.

Mr. Craufurd and Mr. Dunlop have re-introduced this Session the Bill to enable execution to issue in any part of the United Kingdom under judgments or decrees obtained in England, Scotland, or Ireland. It was read a second time on the 4th of February, and the second reading is now fixed, after several adjournments, for the 17th instant. This is a most useful Bill, and has the entire approbation of the Committee, with whom, indeed, a Bill substantially the same originated some years ago.

A Bill to render more effectual the Police in Counties and Boroughs in England and Wales was presented by Sir George Grey on the 5th of February, and read a second time on the 10th of March. It stands committed for the 18th instant. The object of the Bill is to organise a more efficient police throughout the country.

Two Bills for the Abolition of Church rates have been introduced this session; one by Mr. Packe, which was read a first time on the 5th of February, and is to be read a second time on the 21st of May; and the other by Sir William Clay, which was read a second time on the 5th of March, and stands committed for the 30th instant. The Government have intimated their intention of supporting the latter Bill.

A Bill to amend the law relating to the Conveyance of Land for Charitable Uses has passed the House of Commons, and was read a first time in the House of Lords on the 28th of February. This Bill modifies the 9 Geo. 2, c. 36, which restrains the disposition of lands, and facilitates the assurance of lands to charitable uses. It is to be read a second time on the 18th instant.

Mr. Pellatt has brought in a Bill to amend the provisions of the Marriage Acts relating to Dissenters. It was read a second time on the 5th of March, and stands committed for the 16th instant. It contains 25 sections and three schedules, and regulates the manner and form of notice of marriage, which must be accompanied by a declaration. It prescribes the penalty for a false declaration, and regulates the form of solemnising marriages, &c.

The Ecclesiastical Courts Jurisdiction Bill, for transferring the jurisdiction of the Ecclesiastical Courts to the Superior Common Law Courts, has been already referred to. It was read a first time on the 8th of February, and the second reading is, after various adjournments, appointed for the 4th of May.

A Bill to alter and amend the laws regulating the Medical Profession, and provide a more complete organisation of the Profession, was introduced by Mr. Headlam, and read a second time on the 20th of February. It has been referred to a Select Committee.

The Attorney-General has brought in a short Act to amend the Metropolitan Local Manage-

ment Act of last Session. The object is to define the construction of the word "vestry" in section 8 of that Act. It was read a second time on the 4th of March, and stands committed by adjournment for the 25th instant.

The Drafts on Bankers Bill has been already noticed. The 17th instant is the day fixed for the third reading.

The Justices of the Peace Qualification Bill has been already alluded to. It was presented by Mr. Colville, read a second time on the 27th February, and has been committed for this day.

The Married Women's Reversionary Interest Bill has also been mentioned before. It was presented by Mr. Malins, on the 26th of February, has been read a second time, and the third reading is fixed for the 1st of May.

Mr. Dillwyn has brought in a bill to add flogging to imprisonment for Aggravated Assaults on Women and Children. It was read the first time on the 12th of March, and the second reading is appointed for the 7th of May.

The Solicitor-General's Wills and Administrators Bill has been already alluded to. It was presented and read the first time on the 14th of March, and the second reading is fixed for the 18th instant.

A Bill "to amend the Laws for the Removal of Poor Persons, chargeable in England, who have been born in Scotland or Ireland," has been brought in by Mr. Bouverie. It was read a first time on the 1st instant, and the second reading is fixed for the 18th instant.

Mr. Malins introduced a Bill on the 3rd instant "to abolish all distinctions between specialty and simple contract debts." On which day it was read a first time, and the second reading is fixed for the 1st of May.

A Bill "to amend the Law with reference to the Election of Directors of Joint-Stock Banks in England," was presented by Mr. Roebuck, and read a first time on the 3rd instant. It repeals so much of 7 & 8 Vict. c. 113, s. 4, as renders retiring directors ineligible for a year. The second reading is appointed for the 17th instant.

A Poor Law Amendment Bill has been introduced by Mr. Bouverie, and was read a first time on the 3rd instant. It contains 32 sections; and the object is to amend the Law of Settlement, to provide for the recovery of costs of maintenance in certain cases, and to appoint auditors. The second reading of this Bill stands by adjournment for the 21st instant.

A Bill to amend the Laws relating to Fire Insurances was presented by the Chancellor of the Exchequer, and also read a first time on the 3rd instant. This is a short Bill, requiring insurance companies to take out a license, and give security for payment of the duties, and making persons keeping offices for insurances in foreign companies chargeable with the duties. The Bill also enacts that insurances of property in the United Kingdom, wherever they are made, shall be chargeable with duty. The 18th instant is the day fixed for the second reading of this Bill.

A Bill for regulating and improving the

Medical Profession has been brought in by Lord Elcho and Mr. Fitz-Roy, under the title, "Medical, Qualification and Registration Bill." It provides for the appointment of a Medical Council for the United Kingdom, and for the establishment of a general register of practitioners. It contains 34 clauses and 4 schedules. It was read a first time on the 7th, and has been referred to a Select Committee (the same as that to which Mr. Headlam's Bill has been referred).

A short Bill has been brought in by Mr. Fitz-Roy "for Abrogating the Oath of Abjuration and the Assurance." It was read a second on the 9th instant, and has been committed for the 21st instant.

Sir Stafford Northcote has brought in a short Bill to amend the provisions of the 17 & 18 Vict. c. 74, and 17 & 18 Vict. c. 86, as to the mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools. It was read a first time on the 31st March, and the 16th instant is appointed for the second reading.

A Bill was presented on the 1st instant by Sir George Grey, "for the better regulation of the Corporation of the City of London." The second reading is appointed for the 21st inst. It consists of 86 sections and a schedule, and will be to many a Bill of great interest.

The above comprise all the important Bills which have been brought this year before Parliament, which affect England or the United Kingdom.

*The Committee.*—In concluding the Report, the Committee feel that they may congratulate the Association upon having done much good during the past year, and the Committee have willingly contributed their time and labour towards this result. They take this opportunity of again urging strongly upon their members, and through them, upon the Profession generally, to afford the Committee more pecuniary support than they have hitherto received. Without this, they feel that they cannot effect the amount of good they might otherwise do; and, indeed, the state of the accounts shows, that without increased pecuniary assistance, even the present state of efficiency cannot be maintained. If, however, each member of the Association would, during the ensuing year, obtain one additional subscriber, the Committee believe that double the amount of good might be effected by the Association.

The Association at present numbers 847 members, of whom 211 are metropolitan and 636 provincial. There are 136 life members, and 711 annual subscribers. During the year, including arrears, 511 subscriptions have been received. The total income has amounted to 566*l.* 15*s.*, and the expenses, including liabilities, to 761*l.* 19*s.* 8*d.*

PROCEEDINGS AT THE NINTH ANNUAL  
GENERAL MEETING,  
Held 16th April, 1886.

Mr. Thos. Holmes Bower in the Chair.

The Secretary read the Report and the Annual Balance Sheet.

Resolved,—1. On the motion of the *Chairman*, That the Report of the Committee of Management be received and adopted, and that it be printed and circulated under the direction of the Committee.

Resolved,—2. On the motion of Mr. Lett, of London; seconded by Mr. W. H. Partington, of Manchester,

That the cordial thanks of the Association be presented to the Committee of Management for their labours during the past year.

Resolved,—3. On the motion of Mr. W. H. Partington, of Manchester; seconded by Mr. Hemsley, of London,

That the following members of the Association be elected members of the Committee of Management for the ensuing year:—

*Chairman.*—Mr. J. Sangster.

*Deputy-Chairmen.*

Mr. W. S. Cookson. | Mr. J. Beaumont.

*Metropolitan Solicitors.*

Mr. J. Anderton	Mr. F. N. Devey
" R. B. Armstrong	" Charles Druce
" E. S. Bailey	" E. W. Field
" Keith Barnes	" A. Hemsley
" William Bell	" Henry Karslake
" E. Benham	" T. Kennedy
" George Bower	" H. Lake
" J. Holme Bower	" Edw. Lawrance
" J. Bridges	" C. J. Palmer
" James Burchell	" W. H. Palmer
" E. F. Burton	" J. J. J. Sudlow
" Henry C. Chilton	" W. H. Trinder
" J. M. Clabon	" John Young
" W. S. Cookson	

*Provincial Solicitors.*

Mr. T. F. Champney, <i>Beverley</i>
" C. M. Ingleby, <i>Birmingham</i>
" Arthur Ryland, <i>do.</i>
" J. W. Unett, <i>do.</i>
" S. Clarke, <i>Brighton</i>
" W. Kennett, <i>do.</i>
" H. Verrall, <i>do.</i>
" W. J. Williams, <i>do.</i>
" H. S. Wasbrough, <i>Bristol</i>
" J. Greene, <i>Bury St. Edmunds</i>
" J. Sparke, <i>do.</i>
" T. Wilkinson, <i>Canterbury</i>
" H. T. Sankey, <i>do.</i>
" John Nanson, <i>Carlisle</i>
" F. Potts, <i>Chester</i>
" R. Raper, <i>Chichester</i>
" R. T. Brockman, <i>Folkestone</i>
" John Burrup, <i>Gloucester</i>
" F. L. Bodenham, <i>Hereford</i>
" John Hill, <i>Hull</i>
" Henry Copeman, <i>do.</i>
" J. A. Jackson, <i>do.</i>
" Wm. Henry Moss, <i>do.</i>
" J. C. Smith, <i>do.</i>
" G. L. Shackles, <i>do.</i>
" George Stamp, <i>do.</i>
" Thos. Thompson, <i>do.</i>
" S. B. Jackaman, <i>Ipswich</i>
" John Sharp, <i>Lancaster</i>
" A. S. Field, <i>Leamington</i>



Mr. J. Atkinson, *Leeds*  
 „ Robert Barr, *do.*  
 „ John Bulmer, *do.*  
 „ J. H. Shaw, *do.*  
 „ T. Avison, *Liverpool*  
 „ M. D. Lowndes, *do.*  
 „ R. A. Payne, *do.*  
 „ W. Radcliffe, *do.*  
 „ H. H. Statham, *do.*  
 „ Jas. O. Watson, *do.*  
 „ E. A. Bromhead, *Lincoln*  
 „ J. W. Danby, *do.*  
 „ J. Case, *Maidstone*  
 „ J. F. Beever, *Manchester*  
 „ J. Crossley, *do.*  
 „ N. Earle, *do.*  
 „ James Street, *do.*  
 „ J. Sudlow, *do.*  
 „ Thomas Taylor, *do.*  
 „ G. Thorley, *do.*  
 „ Wm. Crighton, *Newcastle-upon-Tyne*  
 „ T. Scriven, *Northampton*  
 „ Sir W. Foster, Bart., *Norwich*  
 „ William Skipper, *do.*  
 „ H. B. Campbell, *Nottingham*  
 „ R. Enfield, *do.*  
 „ W. Hunt, *do.*  
 „ W. Minchin, *Portsea*  
 „ J. Howard, *Portsmouth*  
 „ Joseph Pears, *Ruthin*  
 „ J. Webster, *Sheffield*  
 „ J. R. Wilson, *Stockton*  
 „ T. Burn, jun., *Sunderland*  
 „ W. Beamont, *Warrington*  
 „ T. Nicks, *Worwick*  
 „ T. Stallard, *Worcester*  
 „ C. Pidcock, *do.*  
 „ John Lewis, *Wrexham*  
 „ Thomas Hodgson, *York*  
 „ George Leeman, *do.*  
 „ G. H. Seymour, *do.*

Resolved,—4. On the motion of Mr. *Statham*, of *Liverpool*; seconded by Mr. *Lett* of *London*,

That the best thanks of the Association be presented to Mr. A. P. *Bower* for his services as Auditor, and that he and Mr. *Bromley* be requested to accept the same office for the ensuing year.

Resolved,—5. On the motion of Mr. *Leeman*, of *York*; seconded by Mr. *Bridges* of *London*,

That the best thanks of this meeting be presented to Mr. T. H. *Bower*, for his able conduct in the Chair.

## LAW DISTRICT IMPROVEMENTS.

THERE are evident signs of street and building improvements about to take place in the neighbourhood of the Inns of Court. The widening of Carey Street at the end next Chancery Lane will take place forthwith. The Houses on the north side of Carey Street, from Lincoln's Inn to Chancery Lane, form part of the Rolls Estate and are now in the hands of Government. The site will be cleared in a few weeks.

The Incorporated Law Society, at Midsummer, will proceed to clear the ground and commence the south wing of the building. The ground floor of the new site will be occupied by offices, which are much required as well for the business of examination and registration as for the accommodation of the increased number of members. The building will contain nearly 30 additional fire-proof rooms—all the present ones being let; also, several more arbitration rooms. The first floor of the south wing will be devoted to the extension of the library, which will then form a noble room upwards of a hundred feet long.

Besides the erection of the new building, it appears that the Society will still possess several houses on the south side. The value of this ground has of late considerably increased, and when the new building is finished and one or more of the new insurance offices and other houses completed on the west side of Chancery Lane, and the street widened from Fleet Street to Carey Street, this important thoroughfare will be greatly improved.

There seems no doubt that the great central street, which we lately mentioned, will soon be commenced, extending from Cheapside, over Farringdon Street by a viaduct, and thence to the north side of the Record Repository, along Carey Street to Long Acre.

Then, we trust, on the south side of the new street, between Lincoln's Inn and the Temple, will be erected the new Courts and offices, in the midst of the "Law District," which forms the centre of the metropolis.

## STATUTE LAW COMMISSION.

### MEMORANDUM OF THE ATTORNEY-GENERAL.

IN order to form a correct judgment as to the course of proceeding which it is expedient to adopt in the Consolidation of the Statutes, it is, in the first place, necessary to have a clear view of what is the true nature and extent of the work which the Commission is called upon to execute. It will then be seen how far what has hitherto been proposed is adequate to the magnitude and importance of the work to be accomplished. To me, I must acknowledge, it appears that the view which has been taken of the object has been too limited and narrow, and that the mode of proceeding has, in consequence, been far from commensurate to the magnitude of the undertaking.

It can scarcely be denied that the state of the law of this country is discreditable to us as a great and enlightened people. Partly written, partly unwritten, that part of our law which is unwritten, is to be gathered from the decisions and dicta of Judges, dispersed over many hundred volumes of reports, or from the opinions of text writers, of various degrees of authority, contained in innumerable works; while the written law is scattered over thousands of Statutes, strung together without any attempt at order or arrangement, and forming no less than 40 ponderous volumes; the whole body

of the law thus constituting a chaotic mass, to which the "many camel loads" of jurisprudence, of which the Roman jurists complained, hardly afford a parallel. A life of labour scarcely suffices to the professional lawyer to master, even imperfectly, this vast amount of legal learning; while to the body of the people, whose rights and duties are to be determined and whose conduct is to be regulated by the law, that law is practically a sealed book.

The time is at length come for remedying, at least in part, this mighty grievance. Although it is still deemed too difficult a task to attempt to embody, in the more tangible form of writing, the floating rules of the unwritten law, we are called upon by the high authority of the Crown to devise means for reducing into shape and order the heterogeneous mass of written laws which now swell and encumber our Statute Book.

To the due execution of such a task it is obviously essential that, at the outset, some plan of proceeding should be laid down, which may, as far as possible, ensure a complete and satisfactory result.

The course of proceeding originally proposed, and which to the present time has been sanctioned by the majority of the Commission, has been to select particular sets or bundles of Statutes; such as, for instance, the Stamp Acts, the Statutes relating to insurance, those relating to master and servant; and to consolidate each of these sets into a new Statute, to be added to the Statutes of the current Session. According to this plan, Statutes, selected more or less at random (according as particular subjects might be considered as more urgently requiring to be dealt with), were to be, from time to time, consolidated and added to the Statute Book, till all the Statutes of the realm should have been brought under revision, and have undergone the process of consolidation. As the practical offspring of this plan of proceeding, two consolidating Statutes, having reference to two branches of the law totally unconnected with one another—one for consolidating the Statutes on bills of exchange, the other for consolidating the Statutes relating to offences against the person—have in the present Session been simultaneously introduced into Parliament.

There is no doubt that, to a certain extent, consolidation, even of this partial description, will be productive of considerable good. As each set of Statutes shall thus be consolidated, the Statutes forming it will be gathered from their present state of dispersion into one body, and so far good will have been accomplished.

Nevertheless, I am so strongly impressed with a conviction that this course of proceeding is radically defective and vicious, that I feel bound to submit my views to the consideration of the Commission, and again to press on their attention a plan of proceeding which I some time since brought under their notice, and which seems to me far better calculated to ensure a satisfactory result.

It is important at the outset to have a clear

perception of what are the evils incidental to the present condition of our unwritten law, and which it is now the object to remedy.

In the first place, that law is contained in a vast number of Statutes relating to the same subject-matter, scattered over the Statute Books, often at wide intervals, and without anything to connect them.

In the second place, the Statute Book is wholly undigested, and devoid of any system or arrangement whatever.

Thirdly, with the Statutes still existing and in force are mixed up, in the same books, Statutes which have been repealed expressly or by implication, and others which, having been enacted for temporary purposes, have expired by efflux of time, till the whole has accumulated to an immense mass, which is beyond the means or the reach of the great body of the community.

Now, the objections which appear to me to present themselves to the plan hitherto sanctioned by the Commission are, first, that it will leave the second and third of the evils to which I have just referred wholly untouched; and, secondly that it will only deal inefficiently and incompletely with the work of consolidation itself.

It must be admitted that by the course hitherto pursued by the Commission nothing will be done towards digesting or bringing into order, as a whole, the Statutes now standing in the volumes which contain our Acts. Each consolidating Statute is to be added, in the order in which it may chance to pass, to the Statutes of the current year.

The third head of objection is closely connected with the foregoing. One principal object sought by those who desire the reform of our Statute Law, is that the living law shall be separated from the mass of dead or obsolete matter; that thus the bulk of the Statutes shall be reduced to a comparatively small and manageable compass, and the Statute Law thereby be made practically accessible and available to those beyond whose reach it is now placed by reason of its bulk and costliness. It is plain that by the course hitherto adopted by the Commission, nothing will be done towards this very desirable end. As I have before observed, each consolidating Statute will go to swell the existing Statute Book, and the object of starting afresh with a condensed collection of the existing Statute Law, casting off the long series of volumes of repealed or useless Statutes, will be as far, or farther off than ever.

But a still more serious objection to the plan of the Commission arises from the imperfect character of their scheme even as relates to the mere purpose of consolidation, independently of all collateral objects.

Entering upon the work without having first made any digest or analysis of the Statutes to be consolidated, we are putting to sea without chart or compass; we are not enabled to form a clear or definite conception of the extent of the work to be done, or of the time and means necessary for its accomplishment; nor, as we

proceed, shall we have the means of knowing how far it has been perfectly and finally completed. Dealing with so great and difficult an undertaking in a fragmentary manner, without unity of purpose or comprehensiveness of design, we are little likely to see it brought to a speedy or successful termination; the work of legislation will more than keep pace with that of consolidation, and after years of labour we shall find our task still incomplete. With this impression, I venture to submit to the consideration of the Commission the method which it appears to me expedient to pursue.

The objects to be accomplished in the process of consolidation are, I conceive, these:—

1. To collect all the Statutes now existing and in force under appropriate heads; *i. e.*, to consolidate.

2. To arrange these heads under the different branches into which the whole body of our law divides itself; *i. e.*, to digest.

3. To do this as a great, entire and comprehensive whole; so that the consolidated and digested body of the Statute Law may be presented to the country at one and the same time, or as nearly so as may be, and may then supersede the voluminous and confused multitude of laws which at present constitute the 40 volumes of our Statutes.

To effect these objects, I would submit to the Commission the following plan of proceeding:—

That a survey shall be formed of the whole body of the law, under its various leading branches, divisions, and subdivisions.

That the Statutes shall then be gone through from their commencement, and setting aside and omitting those which have been repealed expressly or by implication, or have expired by efflux of time, those that are still in force shall be consolidated under the respective branches of the law and the heads to which they belong.

That, this being done, the consolidating Statutes shall be presented to Parliament with a preliminary provision that all Statutes not included in such consolidated Acts shall be thereby repealed.<sup>1</sup>

That this shall be done as one entire work, so that on the adoption by Parliament of the new Statutes the whole of the written law shall be to be found in the Statute Book which shall then have received the sanction of the Legislature.

It will not, I think, be denied that by this process the work will be effectually and completely done. Each Statute will be brought under review: if repealed or expired, it will be eliminated from the living law; if existing, it will be brought into its proper place in the

Statutory digest; and thus the whole written law will be brought into the smallest possible compass, and into the most useful and available form.

To this plan it has been objected that it is too large and comprehensive, and would require too much time and too much expenditure of means for its completion.

The force of this objection must depend on the extent of the work contemplated by the Commission. If the design is only to consolidate fragmentary portions of the Statute Law, selecting those which may be thought to call urgently for consolidation, the plan which I have sketched may well appear too large; but, if the consolidation on which we are engaged is to embrace the whole body of the Statutes (and nothing less, I apprehend, will satisfy Parliament or the country), then it must be obvious that what I have suggested must be accomplished sooner or later, and that the whole matter turns on the amount of power that can be made available for the accomplishment of the purpose. This, of course, must depend on the liberality of Parliament. My own conviction is, that the necessity for the consolidation of the Statutes being now so strongly and universally felt, Parliament would readily supply whatever might be required for its accomplishment, if once convinced that the work was undertaken in earnest and with a reasonable certainty of a speedy and satisfactory result. For my own part, I can see no reason why, if a sufficient number of able and efficient hands are employed, the whole work should not be executed in 12 months, while I am thoroughly convinced, if we proceed in the manner hitherto pursued, 20 years (much less two, as has been, I must own, I think with some rashness asserted) will not suffice even for its imperfect completion.

I am satisfied it would be much wiser in the Commission to ask for, and in Parliament to grant sufficient means to enable us to grapple with this great task with vigour, and a determination to execute it at once and out of hand, than, by limiting the means, to spread the execution over an indefinite series of years, with no certainty, after all, that it will ever be thoroughly accomplished.

It has been further objected that the analysis of the law which forms the groundwork of my plan is impossible to be realised; that no two persons would agree on the precise form of such an analysis, and that time would be lost in the discussion of this preliminary matter.

There is no reality in the difficulty here put forward. It is obvious that any difference of opinion on this score might be at once disposed of by the collected authority of the Commission. Besides, it is not a perfect analysis, in a scientific point of view, that is required, but such a one as will suffice for the practical purpose of so dealing with the Statutes in the process of consolidation as to ensure that none shall be passed over, and of arranging them in such a systematic order as shall render them easy of reference to those who have occasion to

<sup>1</sup> There are one or two Statutes which it would be a species of profanation to repeal and re-enact, such as Magna Charta and the Bill of Rights. These I should propose to except from any general repealing enactment, and would place them by themselves, at the head of the new Statute Book.

consult them. The great text writers who have dealt with the entire body of the law have found no difficulty in framing such an analysis as that which I am suggesting, nor did those eminent jurists who in so short a period of time reduced the multitudinous mass of French law into that admirable code of which France is so justly proud.

[We reserve the statement of the Attorney-General's outline of his plan.]

## NOTES OF THE WEEK.

### NEW LAW CHANGES.

It has been rumoured in Westminster Hall that a very important change will shortly take place in the constitution of the various Courts. It is stated that Sir John Jervis, the Lord Chief Justice of the Common Pleas, will be raised to the Peerage for Life, and that he will be succeeded by Sir Frederick Thesiger.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*In re Birkenhead, Lancashire and Cheshire Junction Railway Company, ex parte Incumbent of Gildes Sutton, and Rector of St. Bridget's, Cheshire.* May 30, 1856.

**RAILWAY COMPANY. — RECEIPT OF DIVIDENDS ON PURCHASE-MONEY. — COSTS OF NEW POWER OF ATTORNEY.**

A railway company purchased certain land, to which a perpetual curate and the rector were jointly entitled, and the money having been paid into Court was invested, and the dividends were ordered to be paid under a power of attorney to their London bankers, and the company paid the costs thereof. The perpetual curate afterwards died: Held, affirming the decision of Vice-Chancellor Stuart, that the railway company were liable to the costs of a new power of attorney in favour of the successor to the perpetual curacy.

Held also, that the question was properly brought on by summons at Chambers instead of by petition.

It appeared that the above railway company had purchased in 1851 certain land, to which the above-named perpetual curate and rector were jointly entitled, and that the purchase-money had been paid into Court and invested, and the dividends ordered to be paid to the petitioners under a power of attorney to their London bankers. The railway company had paid the costs of this petition and power, but on the death, in 1854, of the perpetual curate, they objected to bear the expense of a new power in favour of his successor. The Vice-Chancellor Stuart having, on summons, ordered such payment, this appeal was presented.

Dart in support, and on the ground that the question should have been brought on by petition. ; C. Hall, contra.

### ADMISSION OF SOLICITORS.

At the Rolls, 12th June, at 4 o'clock.

### TRANSFER OF CHANCERY APPEALS.

The following appeals have been transferred from the paper of the Lords Justices to the paper of the Lord Chancellor:—

Farina v. Silverlock. Collins v. Cave.  
Selwyn v. Smith. Roddam v. Morley.

### EXCHEQUER OF PLEAS.

The Court will hold sittings on the 16, 17, 18, 19, 20, and 21st inst., and will at such sittings proceed to dispose of the business then pending in the New Trial and Special Papers, and in giving judgment in cases then standing for judgment. The Court will also sit on Saturday, the 28th day of June, for the purpose of giving judgments only.

The Lords Justices said, that the appeal must be dismissed with costs.

### Master of the Rolls.

*Hope v. Hope.* May 28, 1856.

**SPECIFIC PERFORMANCE. — AGREEMENT OF COMPROMISE BETWEEN HUSBAND AND WIFE.**

By an agreement between husband and wife, in order to a compromise, it was agreed that the wife should deliver one son to the husband and retain the other; that she should cease to prosecute her suit for a divorce in England, and would not oppose, but facilitate, his suit for the same purpose against her; that he should pay her a certain fixed annual income and pay her expenses incurred in England and her debts in France to a certain extent; and that what articles or property she should be entitled to retain should be settled by arbitration: Held, upon the wife having performed her part of the agreement, and overruling a demurrer for want of equity, that she was entitled to a specific performance.

THIS was a suit by Mrs. Hope against her husband to compel the specific performance of an agreement, whereby it was agreed, compromising certain proceedings which had been taken here and in France, that she should deliver up to Mr. Hope one of their sons and retain the other; that she should cease to prosecute her suit in England for a divorce on the ground of cruelty and adultery, and should not oppose, but would facilitate, his suit against her for the like purpose; that he should pay her an annual income of 75,000 francs, and also the expenses incurred by her in England and any debts in France to the extent of 60,000 francs; and that what articles or property she should be entitled to retain should

be settled by arbitration as therein mentioned. It appeared that Mrs. Hope had performed her part of the agreement, but that her husband had failed to do so, or to pay the stipulated income.

R. Palmer and Kenyon in support of a demurrer to the whole bill for want of equity.

The Master of the Rolls (without calling on Solicitor-General and Terrell for the plaintiff, *contra*) said, that as Mr. Hope had obtained under the agreement certain advantages which he sought, it was not now open to him to claim exemption, and the demurrer would therefore be overruled.

### Vice-Chancellor Stuart.

*Airey v. Hall.* June 2, 1856.

#### VOLUNTARY SETTLEMENT, WHERE PREVIOUS WILL.—CONSTRUCTION.

*A testator, by his will, gave his residuary estate in trust for his three daughters, as tenants in common, to their separate use, and by a voluntary settlement, dated about three months afterwards he appointed, inter alia, a sum of stock and a sum of money (which formed part of such residue), in trust for the separate use of his three daughters for life, without power of anticipation, with remainder over to their children: Held, on the testator's death, that the settlement was binding on the parties in respect of the sums therein included.*

THE testator, by his will, dated in 1837, gave his residuary estate in trust for the separate use of his three daughters, as tenants in common, and by a voluntary settlement executed about three months afterwards, he appointed, *inter alia*, a sum of stock together with a sum of money (which formed part of the residuary estate) to the same trustees, upon trust for the separate use of his said three daughters for life, without power of anticipation, with remainder over to their children. On the death of the testator in August, 1837, the executors and trustees had dealt with the funds in accordance with the settlement, whereupon the plaintiff, one of the daughters, filed this bill.

Bacon and Giffard for the plaintiff; Wigram, Hetherington, W. R. Ellis, De Gex, and H. Bonham Carter for the defendants.

The Vice-Chancellor said, that in the present case there was an express declaration of trust of the sums in question, and that where a trust was fastened on property it would not be allowed to be defeated by mere matter of form. The executors had acted on what they considered to be the effect of the will and settlement, and the Court was now asked by volunteers to disturb what had been done. No authority had been cited in which the Court had thus interfered against a voluntary settlement in favour of volunteers claiming under another voluntary disposition, and there would therefore be a declaration that the settlement was binding as between the parties in respect of the sums in question.

### Vice-Chancellor Wood.

*In re Bankhead's Settlement.* May 31, 1856.

#### BANKRUPT TRUSTEE.—ORDER AND DISPOSITION.—POLICY OF INSURANCE.

*The surviving trustee of a marriage settlement received a considerable sum of trust money which he omitted to invest, but paid interest at 4 per cent. It appeared that he had placed in a tin box, marked with the name of the trust, the marriage settlement and securities upon which the property subject thereto was invested, and also two policies of insurance on the life of his father and of himself, together with a memorandum that in the event of his death the amount of the inclosed policies should be applied respectively to the repayment of the sum borrowed at 4l. per cent. The amount of the former policy he had received and applied to his own use: On his bankruptcy, held that the policy on his own life was not within the order and disposition of the bankrupt under the 12 & 13 Vict. c. 106, s. 127, as to pass to his assignees, and it was ordered to be transferred to the new trustees of the settlement.*

It appeared that Sir J. D. Paul was the surviving trustee of the settlement made on the marriage of his sister with Mr. Bankhead, and that he had received and omitted to invest a sum of 4,000*l.*, which he retained to his own use, paying interest at 4 per cent. In August, 1848, he placed in a tin box at the bank, marked *Bankhead's Trust*, the marriage settlement and securities on which the property subject thereto was invested, and also two policies of insurance on the life of his father and of himself for 2,000*l.* and 3,000*l.* respectively, together with a memorandum signed by himself as follows:—"In the event of my death, the amount of the inclosed policies of insurance for 3,000*l.* and 2,000*l.* to be applied respectively to the repayment of 4,000*l.* borrowed by me of Mrs. Bankhead at 4*l.* per cent." It appeared that he had received and applied to his own use the amount of the policy on his father's life, and that the 4,000*l.* still remained due when he became bankrupt in June, 1855. The new trustees of the settlement now presented this petition for the transfer to them by the assignees of the policy of insurance.

Rolt and W. D. Lewis in support, cited *Esparte Greaves*, W. R. 1856, p. 536.

Daniel for the trustees; Chandless for the assignees, referred to the 12 & 13 Vict. c. 106, s. 127.

The Vice-Chancellor said, that the only question was decided by the case cited of *Esparte Greaves*. If a declaration of trust was made by a sole trustee, he was the proper person to be in possession of the property. Sir J. D. Paul was the true owner of the policy, and the question of reputed ownership did not arise as it was affected with the trust when the bankruptcy took place. The form of the memorandum was peculiar, but still it was meant to

create, and did create, an immediate trust, and an order would therefore be made for the transfer of the policy to the new trustees of the settlement.

*Gough v. Davies.* June 2, 1856.

FELON.—NEXT OF KIN.—PARDON.—CROWN.

*After a felon, who had been transported, had been pardoned by the Governor of New South Wales under the 30 Geo. 3, c. 47, and such pardon had been approved by her Majesty under the 4 Geo. 4, c. 96, s. 35, he became entitled upon the death of a testator as one of the next of kin under his will: Held, that he was entitled to claim his share under the will as against the Crown under the 5 Geo. 4, c. 84, s. 26.*

THIS was an administration suit of the estate of the late Mr. William Dick. It appeared that by his will there was an ultimate limitation in favour of his next of kin upon the death of his granddaughter, contingent on certain events which had happened, and that one of such next of kin was James Gough, who had been convicted of felony and sentenced to death in 1812, and transported for life to New South Wales in the following year under a commutation of the sentence. It appeared that in 1841 the Governor of the Colony had included his name in the list of pardons under the 30 Geo. 3, c. 47, and which had been duly approved by her Majesty under the 4 Geo. 4, c. 96, s. 35. The testator's granddaughter died in April, 1855, and the question now arose on an adjourned summons from chambers, whether James Gough was entitled to claim under the will.

By the 5 Geo. 4, c. 84, s. 26, it is enacted,—"And whereas it hath sometimes happened that felons under sentence or order of transportation in New South Wales and the islands adjacent have received from the Governor or Lieutenant-Governor thereof remissions, either absolute or conditional, of the whole or of some part of the term of their transportation, and have by their industry acquired property, in the enjoyment whereof it is expedient to protect them, &c.; be it therefore enacted, that it shall and may be lawful for every felon under sentence or order of transportation, who hath received, or shall receive, any such remission as aforesaid from the Governor or Lieutenant-Governor of New South Wales, or from the Governor or Lieutenant-Governor of any other colony, who may be authorised to grant the same, while such felon shall reside in a place where he lawfully may reside under such sentence, order, or remission, and under the provisions of this Act, to maintain any action or suit for the recovery of any property real, personal, or mixed, acquired by such felon since his or her conviction, and for any damage or injury sustained by such felon since his or her conviction, not only in the Courts of the colony or place where such felon shall reside, but also in the Courts of this kingdom and of all other his Majesty's dominions."

*Rolt and Cairns* for the claimant; *Wickens* for the Crown.

The Vice-Chancellor said, that although the preamble of the 5 Geo. 4, c. 84, s. 26, seemed only to contemplate the protection of property acquired by industry, the enacting part was more general and included any property real, personal, or mixed for which the felon might sue, not only in the colony but in any other part of his Majesty's dominions. The intention was, that after a pardon had been granted, and the convict became industrious, it was desired to protect him in the enjoyment of his property, and to encourage him in his disposition towards industry. Although in this case the property had fallen to the convict in no sense by his industry, upon a sound and liberal construction of the section, and adhering to the enacting part and not to the preamble of the section, the claim must be allowed as against the Crown.

*Christie v. Cameron.* June 3, 1856.

INFANT.—GUARDIAN AD LITEM.—SERVICE ON HEAD OF COLLEGE.

*A solicitor was appointed guardian ad litem to an infant undergraduate, under the 32nd Order of May 8, 1845, upon the plaintiff being unable to discover the residence of the father and mother, and the family solicitor declining to furnish the information, and where notice of the application and copy bill had been served on the head of the college and on the infant.*

THIS was a motion under the 32nd Order of May 8, 1845,<sup>1</sup> that one of the solicitors of the

<sup>1</sup> Which provides, that "if, upon default made by a defendant in not appearing to or not answering a bill, it appears to the Court that such defendant is an infant, or a person of weak or unsound mind not so found by inquisition, so that he is unable of himself to defend the suit, the Court may, upon the application of the plaintiff, order that one of the solicitors of the Court be assigned guardian of such defendant, by whom he may appear to and answer or may answer the bill and defend the suit. But no such order is to be made unless it appears to the Court on the hearing of such application that the subpoena to appear to and answer the bill was duly served, and that notice of such application was, after the expiration of the time allowed for appearing to or for answering the bill, and at least six days before the hearing of the application, served upon or left at the dwelling house of the person with whom or under whose care such defendant was at the time of serving such subpoena, and (in the case of such defendant being an infant not residing with or under the care of his father or guardian) that notice of such application was also served upon or left at the dwelling house of the father or guardian of such infant, unless the Court at the time of hearing such application thinks fit to dispense with such last-mentioned service."

Court might be assigned guardian *ad litem* to an infant undergraduate at Exeter College, Oxford. It appeared that the plaintiff had been unable to discover the residence of the infant's father and mother, and that the family solicitor refused to furnish the information. The copy bill and notice of this motion had been served on the head of the college and also on the infant.

*Bowring* in support.

The Vice-Chancellor granted the application.

### Court of Common Pleas.

*In re Martin.* May 7, 1856.

**FINES AND RECOVERIES ACT. — MARRIED WOMAN. — CONVEYANCE WITHOUT HUSBAND'S CONCURRENCE.**

*Order refused under 3 & 4 Wm. 4, c. 74, s. 91, for leave to a married woman to execute a conveyance of certain real property without the concurrence of her husband, where it appeared that his absence was only temporary.*

THIS was a motion under the 3 & 4 Wm. 4, c. 74, s. 91,<sup>1</sup> for an order for leave to a married woman to execute a conveyance of certain real property without her husband's concurrence, who, since November, 1842, had been in the habit of leaving her temporarily for a considerable time, and had now left her since February, and had not been heard of.

*Worledge* in support.

The Court said, that as his absence was only temporary the motion must be refused.

*Harman v. Reed.* May 31, 1856.

**CONTRACT TO PURCHASE MARE AND FOAL. — ABOVE THE VALUE OF 10*l.* — STATUTE OF FRAUDS. — AGISTMENT.**

*The defendant agreed to give plaintiff 30*l.* for a mare and foal and six week's agistment of them, and also of another mare and foal. The defendant's mare and foal had been fed by the plaintiff, but the defendant refused to accept the plaintiff's mare and foal: Held, that as there was no contract*

*in writing and it related to a greater value than 10*l.*, and no acceptance by the defendant or money paid, the plaintiff could not recover the value under the 29 Car. 2, c. 3, s. 17, but semble, he was entitled to sue for the agistment of the other mare and foal.*

THIS was an action to recover the sum of 30*l.* agreed to be paid by the defendant for a mare and foal, and six weeks' agistment of the same, and also of another mare and foal belonging to the defendant. It appeared on the trial before *Jervis*, L. C. J., that the contract was not in writing, and that the defendant afterwards refused to receive the mare and foal although his own animals had been fed by the plaintiff. The plaintiff was nonsuited under the 29 Car. 2, c. 3, s. 17 (Statute of Frauds), whereupon this rule nisi had been obtained to set it aside.

*Bytes*, S. L., showed cause; *O'Malley* and *Couch* in support.

The Court said, that the contract was within the Statute of Frauds, and as there had been no acceptance, and it related to goods above 10*l.*, the plaintiff could not recover, but he was entitled to sue for the agistment. The rule would therefore be discharged.

*Chapway v. Darby.* June 4, 1856.

**NEW TRIAL. — WHERE CAUSE TAKEN AS UNDEFENDED, WHERE NOT SO.**

*Where on a trial the plaintiff's counsel stated the cause was undefended, it appeared that the usher had called the defendant and his attorney, but neither were in attendance, and the action was taken as undefended. It proved, however, that counsel had been instructed to defend, a rule was made absolute for a new trial, the costs to be costs in the cause.*

THIS was a rule nisi to set aside the verdict for the plaintiff and for a new trial. It appeared that on the cause coming on for trial the plaintiff's counsel were in attendance, and made several inquiries whether any counsel appeared for the defendant, and also directed the usher to call the defendant and his attorney. Neither were in Court, and counsel proceeded to open the pleadings, when his junior came in and stated he had heard the cause was undefended, when the usher was directed to call the defendant and his attorney. No one answered or appeared for the defendant, and the cause was taken as undefended.

*O'Malley* and *F. Russell* showed cause against the rule.

The Court (without calling on *M. Chambers* in support) said, that in strictness a counsel should not state to the Judge that a cause was undefended unless he knew it to be so, or unless he had made inquiry of his attorney. The rule would be made absolute, costs to be costs in the cause.

<sup>1</sup> Which enacts, that "if a husband shall, in consequence of being a lunatic, &c., or shall from any other cause be incapable of executing a deed, &c., or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatever, it shall be lawful for the Court of Common Pleas at Westminster, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the said Court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by this Act or otherwise."

## ADVERTISEMENTS.

Re Devon, deceased.—For absolute Sale.—Valuable and improvable Freehold Property, offering to capitalists, trustees, and others, secure and highly remunerative Investments.

**MR. EDWIN FOX** is favoured with instructions to **SELL** by **AUCTION**, at the Mart, on Friday, June 20, at 12, in lots, the valuable **FREEHOLD ESTATE**, forming Nos. 135, 136, 137, and 138, Curtain-road, Shoreditch, being four commodious dwelling-houses and shops, and extensive premises, at present let to responsible tenants but at inadequate rents, occupying a very important position, and from the extent of the area on which it stands, affording advantageous opportunities for building purposes, by which means a greatly improved rental may be obtained. The premises may be viewed, and particulars had of Messrs. Ware and Ware, solicitors, 98, Kingsland-road; of Messrs. Devonshire and Wallinger, solicitors, 8, Old Jewry; of Messrs. Desborough and Co., solicitors, 6, Sisle-lane; of Mr. Wm. Roscoe, solicitor, King-street, Finsbury; of Mr. F. Broughton, solicitor, 4, Falcon-square; at the Mart; and at Mr. Edwin Fox's offices, 41, Coleman-street, Bank.

By order of the Mortgagee.—First-rate Investment, in capital Weekly Property.

**MR. EDWIN FOX** will **SELL** by **AUCTION**, at the Mart, on Friday, June 20, at 12, in one lot, **TWELVE** substantially-built **HOUSES**, situate and being Nos. 21, 22, and 23, Horace-street, Nos. 1 to 6, New Wellington-terrace, and Nos. 22, 23, and 24, Walker-street, Wandsworth-road, a very improving position; let to a respectable class of weekly tenants, at rents amounting to £215 a year. May be viewed, and particulars had on the premises; of Messrs. Ellis, Phillips, and Bannister, solicitors, 12, Clement's-lane; at the Mart; and at Mr. Edwin Fox's offices, 41, Coleman-street, Bank.

Freeholds, at Gravesend.

**MR. EDWIN FOX** is instructed to **SELL** by **AUCTION**, at the Mart, on Friday, June 20, at 12, in two lots, **TWO** convenient **FREEHOLD RESIDENCES**, very pleasantly situate, being Nos. 64 and 65, Windmill-street, Gravesend. No. 65 is let to a responsible tenant at £30 per annum, and No. 64, which is of the same value, is ready for immediate occupancy. May be viewed, and particulars had, on the premises; of W. L. Hanley, Esq., solicitor, 84, Wilson-street, Finsbury; at the Mart; and at Mr. Edwin Fox's offices, 41, Coleman-street, Bank.

Nos. 1, 2, 3, 4, and 5, Camera-street, Chelsea  
—Desirable Leasehold Investment.

**MR. W. F. HAMMOND** will **SELL** by **AUCTION**, at the Commercial Hall, King's-road, Chelsea, on Tuesday, July 1, at 12 for 1, **FIVE LEASEHOLD HOUSES**, in a neat terrace, in perfect repair. Lease fifty years, from Midsummer, 1856. Ground rent £24. Let to excellent tenants, producing £140 per annum.—Particulars and conditions of sale to be had of Mr. C. Hooper, Solicitor, 7, Staple-inn, Holborn; at the Commercial Hall King's-road, Chelsea; of Mr. Oughton, 8, Jubilee-place, King's-road, Chelsea; and at the Auctioneer's Office, 3, Carey-street, Lincoln's-inn.

26, Elizabeth Terrace, Chelsea.

**MR. W. F. HAMMOND** will **SELL** by **AUCTION**, at the Commercial Hall, King's Road, Chelsea, on Tuesday, July 1, at 12 for 1, the above profitable **PROPERTY**, let to a respectable tenant at £28 per annum: ground rent, £5; lease, ninety-six years, from Michaelmas day, 1856. £80 per cent. of the purchase-money may remain on mortgage.—Particulars and conditions of sale to be had of Edward Clarke, Esq., Solicitor, 29, Bedford-row; and at the Commercial Hall, and at the Auctioneer's Office, 3, Carey-street, Lincoln's-inn.

St. Margaret's, Twickenham, opposite Richmond.—Two very desirable Freehold Villa Residences, with Stabling and Gardens, in the Richmond-road, adjoining the Ailsa Villas, with possession.

**MESSRS. FAREBROTHER, CLARK, and LYE** are instructed to **SELL** by **AUCTION**, at Garraways, on Thursday, June 19, at 12, by direction of the Mortgagees, **TWO** very desirable **FREEHOLD** brick-built semi-detached **VILLA RESIDENCES**, known as Campanile Villa and Campanile House, delightfully situate on the St. Margaret's estate, at the corner of the Isleworth-road, adjoining the Ailsa Villas, and close to Twickenham and Richmond-bridge; each house contains seven bed-rooms, two dressing-rooms, dining and drawing-rooms and library, domestic offices, coach-house, stable, and garden. The situation of St. Margaret's, abutting on the river Thames, with the extensive views over Richmond-gardens, the proximity of the railway, and facilities of access to London, renders this a most desirable property for occupation. May be viewed, and particulars had of Mr. Long, Richmond; of Messrs. Warry, Robins, and Burgess, 7, New-inn, Strand; of Messrs. Woodroffe, 1, New-square, Lincoln's-inn; at Garraway's; and at the offices of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand.

Oxfordshire, near to Henley-on-Thames.—The Soundess Estate, with Residence, Farms, Cottages, and about 650 acres of highly-productive Land, interspersed with thriving woodland and under-woods.

**MESSRS. FAREBROTHER, CLARK, and LYE** are instructed to **SELL** by **AUCTION**, at Garraway's Coffee-house, Cornhill, on Wednesday, June the 18th, at 12 o'clock, a very valuable **FREEHOLD PROPERTY** (land-tax redeemed), known as the Soundess Estate, lying within a ring-fence; situate in the parishes of Nettlebed and Bix, in the county of Oxford, about five miles from Henley-on-Thames; comprising a capital residence, with gardens and pleasure grounds, commanding extensive views of the adjoining counties; farms, homesteads, and about 650 acres of productive corn, stock, and grass land, well and conveniently interspersed with thriving beech, woodland, and underwoods, with the right to depasture sheep and cattle, on the commons of Nettlebed and Bix; also, 17 cottages on the estate in substantial repair. The land is in a high state of cultivation, having been judiciously farmed by the proprietor for many years past, and woods are in excellent order. The estate is well calculated for the preservation of game and is within easy distance of three packs of hounds. The roads are good, and the railway will shortly be open to Henley-on-Thames. The estate is situate about 10 miles from Reading, 7 from Wallingford, 18 from Oxford, and about three quarters of a mile from the Church at Nettlebed. Particulars may be had of Messrs. Gray and Godwin, solicitors, Newbury; at the Inns at Oxford, Henley, Reading, and Wallingford; at Garraway's; and at the offices of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand.

Marylebone, Stoke Newington, and Liverpool-road, Islington.

**MESSRS. DENT and SON** will **SELL** by **AUCTION**, at Garraway's, on Wednesday, June 18, at 12, in three lots—No. 32, Park-street, Dorset-square, let at £40 per annum, held at a peppercorn for 45 years; No. 4, Howard-street, Howard-road, Stoke Newington, held for 95½ years from Midsummer, 1856, at a ground rent of £3 10s., and let at £26 per annum; Nos. 11 and 20, Richard-street, Liverpool-road, Islington, let at rents amounting to £46 per annum, No. 11, held for 14½ years at £6, No. 20 held for 15½ years at £6 per annum. Particulars and conditions of sale to be had of J. B. Booth, Esq., solicitor, 51, Tavistock-square; and Dent and Son, 86, Southampton-buildings, Chancery-lane, and Cannon-street.



**Kentish Town.—Leasehold Investments.**

**M**ESSRS. DENT and SON will **SELL by AUCTION**, at Garraway's, on Wednesday, the 18th of June instant, at 12, **SIX LEASEHOLD HOUSES**, Nos. 1 to 6, on the west side of Alma, held by separate leases for about 69 years, at a ground rent of £5 each. Also Two Houses in Clarence-road, Kentish-town, Nos. 10A and 11A, let at rents amounting to £66 per annum, and held for about 70 years, at ground rents—No. 10A at £5, and 11A at £4 per annum. Particulars to be had on the premises in Clarence-road; the "Jolly Anglers" public-house (near Alma-street), Kentish-town; of John Fraser, Esq., Solicitor, No. 16, Fumival's-inn; and Messrs. Dent and Son, No. 36, Southampton-buildings, Chancery-lane, and Camden-town.

The valuable and important Freehold Manor of Newington Barrow, otherwise Highbury, in the parish of St. Mary, Islington, in the county of Middlesex.

**M**ESSRS. DENT & SON have received instructions to offer for **SALE by AUCTION**, at Garraway's, on Wednesday, 18th June next, the above most valuable and improving **MANOR**, heretofore parcel of the possessions of the Crown, with all the customary advantages arising from courts baron, courts leet, courts of survey, fines at the will of the lord, on death or alienation, quit rents, royalties, and all rights, members, profits, emoluments, and appurtenances thereto belonging. By a survey made by order of Henry Prince of Wales (the eldest son of King James I.) in 1611, the manor was founded to contain nearly 1,000 acres, of which 113a. 8r. 0p. were freehold, 407a. 0r. 4p. demesne lands, and 414a. 8r. 14p. were copyhold of inheritance. By the custom of the manor two years' improved rent is payable to the lord on death or alienation. The quit rents payable at this time amount to £3 18s. 10d. per annum, extending over very valuable property, estimated at upwards of £1,800 per annum, exclusive of those in abeyance. The emoluments to be expected to arise from lands and appurtenances, from which the quit rents and customary fines and payments have been omitted to be enforced, or are in abeyance, are very considerable; and the whole forms an important investment in every respect worthy the attention of gentlemen of the legal profession or the capitalist. Particulars and conditions of sale, with a plan of the manor, are in progress, and will shortly be ready at the place of sale; the Angel Tavern and the Blue Coat Boy at Islington; the Gate-house, Highgate; the Archway Tavern, Upper Holloway; the Compasses, at Hornsey; the Plough, Hornsey-road; at the offices of B. W. Powys, Esq., solicitor, 38, Russell-square; and of Messrs. Dent and Son, 36, Southampton-buildings, Chancery-lane, and Camden-town.

On the Bishop of Winchester's Estate, Southwark.—Leasehold Estates, Red Cross-street, Union-street, consisting of a Public-house, known as the Rose and Ram, Two Shops and a private House adjoining, Yards and Warehouses, and Seven Houses in Angel-court in the rear, the whole producing an annual rental of about £262 per annum, and held for three lives at a ground rent.

**M**ESSRS. FAREBROTHER, CLARK, and LYE are instructed to offer for **SALE by AUCTION**, at Garraway's, on Thursday, the 19th of June, at 12 o'clock, a **LEASEHOLD ESTATE**, held under the Bishop of Winchester's lessees, Robert Pott and Arthur Pott, from 6th April, 1820, for 61 years, for lives of the said Robert Pott and Arthur Pott, at the yearly rent of £120, comprising the Rose and Ram Public-house, 88, and 84 and 85, Red Cross-street, let on lease for 56½ years from December, 1820, at £75 per annum; 86, Red Cross-street, and a shed in the rear, £50 per annum; a gateway, entrance-yard, and premises in the rear, let at £28 per annum; Nos. 1, 2, 8, 4, 5, 6, and 7, Angel-court, Red Cross-street, let at rents amounting

to £109 per annum. The whole producing a rental of upwards of £262 per annum. May be viewed, and particulars had of Messrs. Warry, Robins, and Burgess, solicitors, 7, New-inn, Strand; of Mr. Parr, 80, Bridge-street, Southwark; at Garraway's; and at the offices of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand.

**Herts.—The Langley Bury.—Important Freehold Estate, Mansion, Park and Woods, with extensive Shooting and Fishing, delightfully situated about three miles from Watford, near to Cashiobury, together with two capital Farms, known as Langley Bury and Jeffries Farms, the whole comprising upwards of 750 acres.**

**M**ESSRS. FAREBROTHER, CLARK, and LYE are instructed by the **Deftes** in trust, under the will of the late E. F. Whittingstall, Esq., to prepare the above highly important **ESTATE for SALE by AUCTION**, at Garraway's, on Wednesday, June 18, at 12 (unless an acceptable offer be made in the meantime by Private Contract), the distinguished **FREEHOLD ESTATE**, known as Langley Bury, in the parish of Abbot's, Langley, three miles from Watford, adjoining to Cashiobury and the Grove, the seats of the Earl of Essex and Earl of Clarendon, comprising the capital and spacious mansion, seated on an eminence in the centre of a beautiful and undulated park ornamented with stately timber and plantations, commanding extensive views, and surrounded by pleasure grounds, plantations, and ornamental woods. It is in the most perfect order, and contains every accommodation for a nobleman's or gentleman's family: kitchen garden with forcing houses, excellent stabling and loo-boxes, capital farm-house and extensive range of modern agricultural buildings, together with about 700 acres of arable, meadow, pasture, and wood land, including the woods known as Junipers' Berry Bushes, North Grove, Stubble, Croft, and Sandpit. The residence is approached from the high road by two lodge entrances, and there are rights of fishery for nearly two miles, numerous stalls and ponds for cattle supplied from the canal, adjoining which is a mill, which forces the water to the mansion, farm buildings, and ponds, and also serves the purpose of grinding, cutting, &c., for the stock. The estate is in the highest state of cultivation, having been farmed by the late owner, regardless of the cost, for the last 20 years; it is capable of carrying a large flock throughout the year, and many of the prizes for short-horns have been carried off by the owner of this estate. The woods and plantations are in excellent condition, and to protect the game and improve the appearance many thousands of hollies, firs, larch, &c., have been planted therein within the last ten years; conveniently placed is a gamekeeper's house, breeding paddock, &c., and the game is abundant. The surrounding district is studied with noblemen's and gentlemen's seats. The King's Langley Station is about 1½ mile distant, and the Watford Station under three miles. The canal forms the boundary of the estate on the north-east side, and the railway is sufficiently far to form a pleasing object in the distance. Adjoining the estate is a compact farm, known as Jeffries, with farm-house, out-buildings, garden, orchard, &c., and 85 acres of arable and meadow land, abutting on the estates of the Earl of Essex, Earl of Clarendon, Mr. Mont. Mr. Blackwell, and others. The mansion may be viewed by cards only. Particulars, with plans, may be had of Messrs. Smith and Grover, solicitors, Hemel Hempstead; of Mr. Lavender, surveyor, Watford; at the inns at Watford, Boxmoor, Tring, and Rickmansworth; and in London of Messrs. Symes, Teesdale, and Sandilands, solicitors, 38, Fenchurch-street; of J. T. Grover, Esq., solicitor, 55, Bedford-row; at Garraway's; and at the offices of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, JUNE 14, 1856.

### LAW OF EVIDENCE.

#### FURTHER PROPOSED ALTERATIONS.

In no department of the law has so great a change taken place, in recent times, as in the rules of Evidence. We have passed from one extreme and are making rapid progress to the other. For fear of the slightest inducement to perjury, the Legislature excluded the testimony of witnesses who had the smallest or most remote interest. We are now allowed not only to examine persons who may have an immediate or future interest, but even the parties themselves, who are directly concerned in the issue of the litigation, may give evidence on their own behalf. Lord Denman's Evidence Acts, and the Common Law Procedure Acts, appeared to have extended the rules as far as could be reasonably supported: but the love of progress seems to have affected Conservative as well as Liberal Legislators, and we have now before us the very elaborate and comprehensive Bill of Sir Fitzroy Kelly, the former Solicitor-General, for "further amending the Law touching Evidence and Procedure," an abstract of which we laid before our readers on the 17th May.

Leaving for the present the clauses relating to "Procedure," we propose to call attention to the general purport and effect of the proposed enactments "touching Evidence." Our readers are so absorbed in the affairs of their clients, that they require to be reminded, again and again, of the changes which are projected in legal procedure and the rules and regulations relating to the administration of justice.

Amendments of the kind proposed by this Bill, coming from one of the most eminent lawyers and advocates of the English Bar, are entitled to respectful attention. It cannot be supposed that the proposed

enactments proceed from any party feeling or ambition. They are evidently the result of much experience and consideration, and appear to comprise all the remaining suggestions which can be made for carrying into effect all that the most comprehensive and philosophic reformers of the Law of Evidence could desire. The propositions now made, with their antecedents, seem to go as far as Jeremy Bentham himself would have recommended for the ascertainment of truth.

We shall take the most prominent of the alterations suggested by the Bill, and arrange them in the order which appears the most convenient for the consideration of our readers.

1st. *As to the competency of witnesses:*—It is proposed that any fact may be proved or disproved by the uncorroborated testimony of a *single witness*, if such testimony be deemed worthy of credit: except as to cases of high treason or orders of affiliation.

The rule of law which presumes that a wife, who commits an offence in the presence of her husband, acts under his coercion, is also to be repealed.

Where any person subject to the Bankrupt Laws shall be a party to an action, his books of account, if the entries therein be proved to have been made by himself or by some agent, whose absence is satisfactorily accounted for, shall be receivable as evidence, provided the entries appear to the Judge to have been kept fairly and with a reasonable degree of regularity.

2nd. *Abolishing the protection of witnesses from answers which might criminate them.*—No witness in any proceeding, civil or criminal (to which he is not a party), shall refuse to answer any question, because the answer may expose him to any penalty, or may criminate himself, unless the Judge be of opinion that the answer will tend to subject such witness to punishment for a *felony*.

3rd. *The admission of confessions.*—No confession tendered in evidence shall be rejected because a promise or threat has been held out, unless the Judge shall be of opinion that the inducement was calculated to cause an untrue admission of guilt. This new rule is to be subject to the following exceptions:—

No clergyman, without the consent of the person making the confession, shall divulge it, if made to him in his professional character; and no medical man, without the consent of his patient, shall divulge any information which he may have acquired in attending the patient, unless the sanity of the patient be the matter in dispute.

4th. *Exclusion of documentary evidence.*—No written instrument shall be void by any obliteration, spoliation, or other alteration, except so far as the effect of the instrument before such alteration shall not be apparent, provided the party prove that such alteration was the effect of accident or mistake.

5th. *Parol evidence*, shall be admissible for the purpose of rectifying a written agreement.

6th. *Guarantees.*—A promise to answer for the debt of another, if signed by the party, shall be binding, though the consideration of the promise be not set forth, provided such consideration can be otherwise proved.

Every document, the validity of which depends upon its being signed by some particular person, may be signed by his authorised agent, and the authority to sign any document may be granted orally.

## APPELLATE JURISDICTION.

It was stated in our last Number, that the salary of the Lord Justice General of Scotland is 5,500*l.* per annum. We are now informed that in point of fact it is only 4,800*l.* The salary of the Lord Justice Clerk is 4,500*l.*; and each of the other eleven Judges receives 3,000*l.* per annum.

Our "Northern Correspondent," we are told, pays far too high a compliment to the Scotch Judges, when he thinks that their single opinion would control the views of all the other Judges of the Appellate Court. It is urged as not very probable that three or four eminent English or Irish Judges would submit to such control; and that the chief advantage to be derived from the appointment of a Scotch Judge would arise from his per-

fect knowledge of the forms of procedure in the Scotch Courts, which are very different from those of the English and Irish Courts of Law.

But it may be asked, do questions in the House of Lords depend on the forms of procedure?

## BILL TO REPEAL SLEEPING STATUTES.

By this Bill it is proposed that the Acts hereinafter-mentioned, together with all enactments (if any) confirming, continuing, or perpetuating the same, or any of them, be repealed: Provided that such repeal shall not affect any legal proceeding commenced under any of such Acts before the passing of this Act.

Statute of Westminster the Second, 13 Edw. 1, c. 33.—Lands where crosses be set shall be forfeited as Lands alienated in Mortmain.

Statute of Westminster the Second, 13 Edw. 1, c. 41.—*A Contra formam collationis* and a *Cessavit* to recover Lands given in Alms

Articuli super Chartas, 28 Edw. 1, c. 5.—The Chancellor and the Justices of the King's Bench shall follow the King.

Articuli super Chartas, 28 Edw. 1, c. 20.—Vessels of Gold shall be essayed, touched, and marked; the King's Prerogative shall be saved.

5 Edw. 3, c. 14.—Night Walkers and suspected Persons shall be safely kept.

Statute of Nottingham De cibariis utendis, 10 Edw. 3.

25 Edw. 3, Stat. 5, c. 22.—He that purchaseth a Provision in Rome for an Abbey, shall be out of the King's protection, and any Man may do with him as with the King's enemy.

28 Edw. 3, c. 10.—The Penalty of the Mayor, Sheriffs, &c., of London, if they do not redress Errors and Misdemeanors there; and in what Counties the Trial thereof shall be.

37 Edw. 3, c. 15.—Clothiers shall make Cloths sufficient of the aforesaid Prices, so that this Statute for default of such Cloths be in nowise infringed.

6 Ric. 2, stat. 1, c. 9.—No Victualler shall execute a judicial Place in a City or Town Corporate.

7 Ric. 2, c. 13.—No man shall ride in Harness within the Realm; nor with Launcegays.

12 Ric. 2, c. 12.—In what Cases the Lords and Spiritual Persons shall be contributory to the Expenses of the Knights of Parliament.

12 Ric. 2, c. 13.—The Punishment of them which cause Corruption near a City or great Town, to corrupt the Air.

13 Ric. 2, stat. 1, c. 8.—The Rates of Labourers' Wages shall be assessed and proclaimed by the Justices of Peace, and they shall assess the Gains of Victuallers who shall make Horsebread, and the Weight and Price thereof.

17 Ric. 2, c. 4.—Malt sold to London shall be cleansed from the Dust.

17 Ric. 2, c. 10.—Two learned men in the Law shall be in Commission of Jail Delivery.

20 Ric. 2, c. 1.—No Man shall ride or go armed; Launcegays shall be put out.

20 Ric. 2, c. 2.—Who only may wear another's Livery.

1 Hen. 4, c. 15.—The Punishment of the Mayor, &c., of London for Defaults committed there.

4 Hen. 4, c. 5.—Every Sheriff shall in Person continue in his Bailiwick, and shall not let it.

4 Hen. 4, c. 10.—The Third Part of the Silver bought to the Bullion shall be coined in Halfpence and Farthings.

4 Hen. 4, c. 25.—An Hostler shall not make Horsebread. How much he may take for oats.

4 Hen. 4, c. 27.—There shall be no Wasters, Vagabonds, &c., in Wales.

4 Hen. 4, c. 29.—Welshmen shall not be armed.

5 Hen. 4, c. 2.—The Penalty of him which procureth Pardon for an Approver that committeth Felony again.

5 Hen. 4, c. 13.—What Things may be gilded and laid on with Silver and Gold, and what not.

7 Hen. 4, c. 7.—Arrowheads shall be well boiled, brased, and hard.

11 Hen. 4, c. 1.—The Penalty on a Sheriff for making an untrue Return of the Election of the Knights of Parliament.

1 Hen. 5, c. 4.—Sheriff's Bailiffs shall not be in the same Office in Three Years after; Sheriff's Officers shall not be Attorneys.

2 Hen. 5, stat. 2, c. 4.—There shall be no gilding of Silver Ware but of the Allay of English Sterling.

4 Hen. 5, c. 6.—Penalty on Irish Prelates for collating an Irishman to a Benefice in England or bringing an Irishman to Parliament to discover the Counsels of Englishmen to Rebels.

8 Hen. 5, c. 3.—What things only may be gilded and what laid on with Silver.

9 Hen. 5, stat. 1, c. 10.—Keels that carry Sea Coals to Newcastle shall be measured and marked.

1 Hen. 6, c. 3.—What sort of Irishmen only may come to dwell in England.

6 Hen. 6, c. 4.—The Sheriff's Traverse to an Inquest found touching returning Knights of Shires for the Parliament.

8 Hen. 6, c. 22.—What is requisite to be done in winding and packing of Wool. None shall force, clack, or beard any Wool.

11 Hen. 6, c. 1.—They that dwell at the Stews in Southwark shall not be impanelled in Juries nor keep any Inn or Tavern but there.

8 Hen. 6, c. 18.—How much a Captain shall forfeit that doth detain any Part of his Soldier's Wages.

23 Hen. 6, c. 4.—Welshmen indicted of Treason or Felony that do repair unto Herefordshire shall be apprehended and imprisoned

or else pursued by Hue and Cry, and a Forfeiture of those who do not pursue them.

8 Hen. 6, c. 5.—The Penalty of the Officers of the Customs which by Colour of their Offices shall distrain any Man's Ships or Goode.

4 Edw. 4, c. 8.—No Stranger shall buy English Horns unwrought gathered or growing in London or within Twenty-four Miles thereof. Certain Powers vested in the Wardens of the Horners of London.

7 Edw. 4, c. 4.—An Act for making of Tiles, 4 Hen. 7, c. 2.—Allaying of Gold and Silver, melting, selling, and marking the same.—An Act for Finers of Gold and Silver.

4 Hen. 7, c. 3.—Butchers shall kill no Beasts within any walled Town or Cambridge.—An Act that no Butcher slay any manner of Beast within the Walls of London.

4 Hen. 7, c. 16.—The Penalty of taking more Farms than One in the Isle of Wight.—An Act concerning the Isle of Wight.

11 Hen. 7, c. 19.—What Stuffs, Upholsterers shall put in Bolsters, Featherbeds, and Pillows.—An Act against Upholsterers.

11 Hen. 7, c. 21.—The Ability of every Man that shall be impannelled in any Inquest or Attaint in London.—An Act against Perjury.

11 Hen. 7, c. 27.—A Remedy to avoid deceitful Sleights used upon Fustians.—An Act against unlawful and deceitful making of Fustians.

19 Hen. 7, c. 6.—Pewterers walking. 19 Hen. 7, c. 10.—Sheriffs.—De voluntariis et negligentibus escapiis.

3 Hen. 8, c. 14.—An Act for searching of unlawful Oils.—An Act for the searching of Oils within the City of London.

4 Hen. 8, c. 7.—An Act made for Pewterers and true Weights and Beams.—Pur le Pewterers.

Hen. 8, c. 4.—An Act for avoiding Deceits in Worsted.

14 & 15 Hen. 8, c. 2.—What Apprentices strange Artificers shall take, &c.—The Act concerning the taking of Apprentices by Strangers.

14 & 15 Hen. 8, c. 3.—Touching Worsted Weavers of Yarmouth and Linn.—The Act concerning the draping of Worsted, Sayes and Stamens for the Town of Great Yarmouth.

14 & 15 Hen. 8, c. 12.—What Coiners shall do that make Money at any Mint in England.—An Act concerning coining of Money.

21 Hen. 8, c. 12.—Touching making of Cables, &c., in Burport.—An Act for true making of great Cables, Halsers, Ropes, and all other Tackling for Ships, &c., in the Borough of Burport in the County of Dorset.

21 Hen. 8, c. 16.—Touching Artificers Strangers what they may do as concerning retaining Apprentices, Journeyman, &c.—An Act ratifying a Decree made in the Star Chamber concerning Strangers Handicraftsmen inhabiting the Realm of England.

22 Hen. 8, c. 10.—An Act concerning outlandish People calling themselves Egyptians.—An Act concerning Egyptians.

24 Hen. 8, c. 10.—For the Destruction of

**Crows and Rooks.**—An Act made and ordained to destroy Choughs, Crows and Rooks.

25 Hen. 8, c. 5.—For calendering of Worsteds.—An Act for calendering of Worsteds.

25 Hen. 8, c. 9.—A Bill concerning Pewterers.—An Act concerning Pewterers.

25 Hen. 8, c. 13.—Concerning the Number of Sheep one should keep.—An Act concerning Farms and Sheep.

25 Hen. 8, c. 18.—An Act for Clothiers in Worcestershire.—An Act for Clothiers within the Shire of Worcester.

26 Hen. 8, c. 5.—For the Passage over the Severn.—An Act that Keepers of Ferries on the Water of Severn shall not convey in their Ferry Boats any Manner of Person, Goods or Chattels after the Sun going down till the Sun be up.

26 Hen. 8, c. 6.—The Bill concerning Councils in Wales.—An Act that Murderers and Felonies done or committed within any Lordship Marcher in Wales shall be inquired of at Sessions holden within the Shire Grounds next adjoining, with many good orders for Administration of Justice there to be had.

26 Hen. 8, c. 16.—An Act for making of Worsteds in the City of Norwich and in the Towns of Lynn and Yarmouth.

2 Hen. 8, c. 13.—The Bill for the Breed of Horses.—For Breed of Horses.

33 Hen. 8, c. 16.—A Bill for Worsteds Yarn in Norfolk.—An Act for Worsteds Yarn in Norfolk.

34 & 35 Hen. 8, c. 10.—The Bill for making of Coverlets in York.—An Act for the true making of Coverlets in York.

35 Hen. 8, c. 11.—The Bill for Knights and Burgesses in Wales concerning the Payment of their Fees and Wages.—An Act for the due Payment of Fees and Wages of Knights and Burgesses for the Parliament in Wales.

1 Edw. 6, c. 6.—The Bill for the Continuance of making of Worsteds Yarn in Norfolk.—An Act for the Continuance of making of Worsteds Yarn in Norfolk.

2 & 3 Edw. 6, c. 9.—An Act for the true currying of Leather.

2 & 3 Edw. 6, c. 11.—An Act for the true tanning of Leather.

2 & 3 Edw. 6, c. 19.—An Act touching Abstinence from Flesh in Lent and other usual Times.—An Act for abstinence from Flesh.

2 & 3 Edw. 6, c. 27.—The Bill against false forging of Iron Gadsds instead of Gadsds of Steel.—An Act against the false forging of Gadsds of Steel.

3 & 4 Edw. 6, c. 2.—An Act for the true making of Woollen Cloths.

3 & 4 Edw. 6, c. 9.—An Act for the buying of raw Hides and Calf Skins.

3 & 4 Edw. 6, c. 10.—An Act for abolishing and putting away of divers Books and Images.

5 & 6 Edw. 6, c. 6.—An Act for the true making of Woollen Cloths.—An Act for the making of Woollen Cloths.

5 & 6 Edw. 6, c. 24.—An Act for making of Hats, Dornecks, and Coverlets, in Norwich and in Norfolk.—An Act for the making of Hats,

Dornecks, and Coverlets at Norwich and in the County of Norfolk.

7 Edw. 6, c. 5.—The Act to avoid the excessive Prices of Wine.—An Act to avoid the great Price and Excess of Wines.

7 Edw. 6, c. 7.—An Act for the Assize of Fuel.

1 Mary, stat. 3, c. 8.—An Act touching the buying and currying of Leather.

1 & 2 Ph. and M. c. 4.—An Act against certain persons calling themselves Egyptians.—An Act for the Punishment of certain Persons calling themselves Egyptians.

1 & 2 Ph. and M. c. 7.—An Act that Persons dwelling in the Country shall not sell divers Wares in Cities or Towns Corporate by Retail.

1 Eliz. c. 8.—An Act touching Shoemakers and Curriers.

1 Eliz. c. 9.—An Act touching Tanners and the selling of tanned Leather.

1 Eliz. c. 15.—An Act that Timber shall not be felled to make Coals for burning of Iron.—An Act that Timber shall not be felled to make Coals for the making of Iron.

5 Eliz. c. 8.—An Act touching Tanners, Curriers, Shoemakers, and other Artificers, occupying the cutting of Leather.

8 Eliz. c. 8.—An Act for the repeal of a Branch of the Statute made Anno 32 Hen. 8, touching the Statute of Horses.—An Act for Repeal of a Branch of a Statute made Anno 32 Hen. 8, for the Statute of Horses within the Isle of Ely, and other Places confining therunto.

8 Eliz. c. 9.—An Act to repeal a Branch of the Statute made in the 23 Hen. 8, touching the Prices of Barrels and Kilderkins.—An Act to repeal a Branch of a Statute made Anno 23 Hen. 8, touching the Prices of Barrels and Kilderkins.

8 Eliz. c. 10.—An Act for Bowyers.—An Act for Bowyers, and the Prices of Bows.

8 Eliz. c. 12.—An Act for the Aulneger's Fees in Lancaster, and for Length, Breadth, and Weight of Cottons, Frises, and Rugs.—An Act for the Aulneger's Fees in Lancashire, and for Length, Breadth, and Weight of Cottons, Frises, and Rugs.

23 Eliz. c. 5.—An Act touching Iron Mills near unto the City of London and the River of Thames:

23 Eliz. c. 8.—An Act touching the true making, melting, and working of Wax.—An Act for the true melting, making, and working of Wax.

27 Eliz. c. 19.—An Act for the Preservation of Timber in the Wealds of the Counties of Sussex, Surrey, and Kent, and for the Amendment of Highways decayed by Carriages to and from Iron Mills there.

35 Eliz. c. 9.—An Act touching the Breadth of Plunkets, Azures, and Blues, and other coloured Cloths, made within the County of Somerset or elsewhere of like making.—An Act touching Breadth of Cloths.

1 Jac. 1, c. 6.—An Act made for the Explanation of the Statute made in the Fifth Year of

the late Queen Elizabeth's Reign concerning Labourers.

1 Jac. 1, c. 20.—An Act for Redress of certain Abuses and Deceits used in painting.

3 Jac. 1, c. 9.—An Act for the Relief of such as lawfully use the Trade and Handicraft of Skinners.

3 Jac. 1, c. 16.—An Act for the Repeal of One Act made in the Fourteenth Year of Queen Elizabeth's Reign, concerning the Length of Kersies.

3 Jac. 1, c. 17.—An Act concerning Welsh Cottons.

4 Jac. 1, c. 2.—An Act for the true making of Woollen Cloth.

4 Jac. 1, c. 6.—An Act for repealing of so much of One Branch of a Statute made in the First Year of his Majesty's Reign, intituled "An Act concerning Tanners, Curriers, Shoemakers, and other Artificers occupying the cutting of Leather," as concerneth the sealing of Sheepskins, and to avoid selling of tanned Leather by Weight.

21 Jac. 1, c. 18.—An Act for Continuance of a former Act made in the Fourth Year of the King's Majesty's Reign of England, &c., intituled "An Act for the true making Woollen Cloths," and for some additions and Alterations in and to the same.—An Act for continuance of the Statute made for the making of Woollen Cloths.

21 Jac. 1, c. 21.—An Act concerning Hostlers and Innholders.

12 Car. 2, c. 32.—An Act for prohibiting the Exportation of Wool, Wool Fells, Fullers Earth, or any Kind of scouring Earth.

13 & 14 Car. 2, c. 18.—An Act against exporting of Sheep, Wool, Woolfells, Mortlings, Shorlings, Yarn made of Wool, Wool Flocks, Fullers Earth, Fulling Clay, and Tobacco Pipe Clay.—14 Car. 2, c. 18.

5 W. and M. c. 13.—An Act to repeal the Statute made in the Tenth Year of King Edward the Third for finding Sureties for the good abearing by him or her that hath a Pardon of Felony.—5 & 6 W. & M. c. 13.

9 Wm. 3, c. 40.—An Act for the Explanation and better Execution of former Acts made against Transportation of Wool, Fullers Earth, and Scouring Clay.

10 Wm. 3, c. 2.—An Act to prevent the making or selling of Buttons made of Cloth, Serge, Drugget or other Stuffs.

1 Anne, stat. 1, c. 21.—An Act for preventing Frauds in the Duties upon Salt and for the better Payment of Debentures at the Custom House.—1 Anne, c. 15.

4 Geo. 1, stat. 1, c. 7.—An Act for making more effectual an Act made in the 8 Anne, intituled "An Act for employing the Manufacturers by encouraging the Consumption of Raw Silk and Mohair Yarn."

7 Geo. 1, c. 12.—An Act for employing the Manufacturers and encouraging the Consumption of Raw Silk and Mohair Yarn by prohibiting the wearing of Buttons and Button-holes made of Cloth, Serge, and other Stuffs.

11 Geo. 2, c. 28.—An Act for the better re-

gulating the Manufacture of narrow Woollen Cloths in the West Riding of the County of York.

10 Geo. 3, c. 49.—An Act for continuing and amending several Acts for preventing Abuses in making Bricks and Tiles.

17 Geo. 3, c. 42.—An Act for preventing Abuses in the making and vending Bricks and Tiles.

## STATUTE LAW COMMISSION.

### MEMORANDUM OF THE ATTORNEY-GENERAL.

[Concluded from page 117.]

THE Attorney-General next proceeds to state that he cannot conceive that there would be any difficulty in framing such an analysis as he recommends, when conducted on such a basis that the completeness of consolidation can be ensured. Uncertain whether the Commission would adopt his view of working on this principle, he has not prepared what might be deemed a proper analytical arrangement of the subject; but the following may be given as a rough sketch or general outline.

#### *Laws relating to the Enjoyment of Rights under the Laws of England.*

1. Natural-born subjects.
2. Naturalisation ditto.
3. Denizens.
4. Aliens.

#### *Political Rights and Powers.*

##### *The Sovereign.*

- Succession.
- Allegiance to.
- Prerogative.
- Restrictions upon.
- Royal Family.
- Royal Household.

##### *Parliament.*

1. House of Lords.
  - Constitution of.
  - Officers.
2. House of Commons.
  - a. Constitution of.
  - b. Number of Members.
  - c. Qualification of.
  - d. Election of.
  - e. Electors.
    - (Counties.)
    - (Boroughs.)
  - f. Times and Manner of Election.
3. Assembling of Parliament.
4. Duration of.
5. Dissolution.
6. Privileges of.
7. Acts of.
  - a. Form and Constitution.
  - b. Royal Assent.

##### *Government.*

1. Council.
2. Ministers of State.

##### *Revenue.*

- Hereditary Revenue.
- Taxes.
- Stamps.

Customs.  
 Excise.  
 &c. &c.  
*Defence of the Realm.*  
 Army.  
 Navy.  
 Ordinance.  
 Militia.  
 Volunteers and Yeomanry.  
 Fortifications.  
*Local Government.*  
 1. Municipal Corporations.  
   Constitution of.  
   Election of.  
   Powers of.  
   Officers of.  
 2. In Counties.  
   Justices.  
   Quarter Sessions.  
   County Rates.  
 3. Parochial.  
   Vestries.  
   Officers.  
   Guardians of the Poor.  
*Religion.*  
 Church of England.  
 Dissenters.  
 Roman Catholics.  
 Places of Worship.  
*Laws of a Public Character :*  
 Registration.  
 General Statistics.  
 Education.  
   Universities.  
   Schools.  
 Science.  
 Fine Arts.  
 Public Health.  
   Boards of Health.  
   Sanitary Laws.  
   Removal of Nuisances.  
   Burials.  
 Agriculture.  
 Trade and Commerce.  
   Manufactures.  
   Factories.  
 Navigation.  
   *a.* Inland.  
   *b.* Maritime.  
 Fisheries.  
 Fairs and Markets.  
 Inland Communication.  
   Highways.  
   Turnpikes, &c.  
   Railways, &c.  
   Bridges.  
 Postal Communication.  
   Inland.  
   Maritime.  
 Professions and Trades.  
 Weights and Measures.  
 Places of Public Entertainment.  
 Public Order and Safety.  
 Police.  
   *a.* Burial.  
   *b.* Urban.  
 Building Acts.  
 Poor.

Lunatics.  
   *a.* In general.  
   *b.* Pauper.  
 Charities and Benevolent Institutions.  
 Friendly Societies and other Associations for Mutual Benefit.  
 Savings Banks.  
 Joint-Stock Companies.  
 Insurance.  
*Acts relating to the Personal Liberty and Protection of the Subject, e. g. Habeas Corpus Act.*  
*Civil or Private Rights.*  
   Which may be divided into two main branches,—Rights relating to Persons, Rights relating to Things.  
*Rights relating to Persons.*  
   Husband and Wife.  
   Marriage.  
     Capacity to contract.  
     Solemnisation of.  
     Dissolution of.  
     Personal rights arising from.  
   Parent and Child.  
   Guardian and Ward.  
*Rights relating to Things.*  
   Real property.  
     Capacity to acquire and hold.  
     (Mortmain.)  
   Tenures.  
   Freeholds.  
   Amount of estate.  
   Modes of acquiring.  
     Occupancy.  
     Forfeiture.  
     Escheat.  
     Prescription.  
     Gift.  
     Sale.  
     Descent.  
     Devise.  
   Marriage, effect of, in conferring rights in real property.  
   Rights of husband.  
   Rights of wife.  
   Conveyances.  
     Various modes of.  
     Uses and Trusts.  
   Contracts in respect of Real Property.  
     *e. g.* Vendors and Purchasers.  
     Landlord and Tenant.  
   Copyholds.  
   Things Incorporeal.  
     Commons, &c. &c.  
   Prescription.  
*Rights relating to things personal.*  
   Modes of acquiring.  
   Contracts in respect of.  
     when required to be in writing.  
     Particular Contracts.  
     *e. g.* Master and Servant.  
   Succession to personal property ab intestato.  
   Distribution.  
   Wills.  
     Executors.  
     Administrators.  
     Duties of.

ground, costs were refused to the defendant? How are such decisions to be reconciled, and what is the remedy? M. W.

#### COMPULSORY ENFRANCHISEMENT OF COPYHOLDERS.

I perfectly coincide with the observations in your Number of 10th May, p. 36. When we hear that a lord of a manor has been occasioned an expense of some 300*l.* and been only allowed 100*l.*, surely the existing Acts require amendment. Perhaps if a meeting of lords, or at all events of stewards of manors was convened, and the extraordinary facts elicited, some member of the Profession might be induced to get a bill prepared to remedy the evil. The alternative is, that lords of manors may be called upon to appropriate perhaps one-half of the compensation in discharge of his attendant expenses. M. A.

#### COPYHOLD ENFRANCHISEMENT.

The Lord Bishop of London is lord of a manor at or near Fulham, in right of his see. The copyhold estates are holden subject to the payment of a fine of a year's quit-rent—4*d.* or 6*d.* A. B. holds a copyhold estate worth 300*l.* a year at a quit-rent of 6*d.*, and a fine of 200*l.*, one year's value, is demanded for enfranchisement, although the present income to my lord is only 6*d.* a year. Is this fair and proper, and should not the lords of manors be subject to some restriction in such flagrant cases? A.

#### TO LORDS AND STEWARDS OF MANORS.

It having been stated that a lord of a manor, under the compulsory powers of the recent Act of Parliament, had been subjected to some 300*l.* in law and various surveyors' charges to establish the value of the enfranchisement, of which only about 100*l.* was allowed by the Commissioners, I venture to suggest the propriety and necessity of convening a meeting of lords of manors, or their stewards, to take the matter into consideration, with a view to an application to Parliament to effect the requisite relief in such a flagrant case of injustice and wrong. A SOLICITOR.

### NOTES OF THE WEEK.

#### POST-OFFICE REGULATIONS.—REGISTRATION OF BOOKS.

THE recent regulation, permitting the registration of books and other packets besides letters, will apply not only to packets transmitted by the post within the United Kingdom, but also to those addressed to any British colony or possession. Henceforward, therefore, such packets, whether for places within the United Kingdom or for any British colony or possession, on which the ordinary postage is prepaid by stamps, together with a registration fee of 6*d.*, may be registered.—By command of the Postmaster-General, Rowland

Hill, Secretary.—General Post-office, May 23, 1856.

#### REAL PROPERTY READER.

At a pension of the Hon. Society of Gray's Inn, holden on the 11th June, Thomas Smith Badger, Esq., was elected Reader of the Society on the Law of Real Property. Mr. Badger was called to the Bar by the Benchers of the Middle Temple, on the 29th Jan., 1847.

#### QUEEN'S BENCH SITTINGS.

This Court will hold Sittings on Friday the 20th, and Saturday the 21st days of June inst., and will on those days proceed in disposing of the business remaining in the Special Paper and New Trial Paper, and will also hold a Sitting on Thursday the 3rd day of July next, and give judgment in cases previously argued.

#### COMMON PLEAS SITTINGS.

THIS Court will, on Wednesday, the 18th day of June, instant, and on the two following days, hold Sittings, and will proceed in disposing of the business now pending in the Special Paper and in the Paper of New Trials, and of any other business that may be pending before the Court, and will also proceed to give judgment in certain of the matters that will then be standing over for the consideration of the Court.

#### ATTENDANCE OF JURYMEN.

At the Sittings at *Nisi Prius*, before Mr. Baron Alderson and Common Juries on the 6th instant, several jurymen were fined 5*l.* for non-attendance.

#### NEW COURTS.—SITE OF COVENT GARDEN.

"Covent Garden Theatre, it seems, will not be rebuilt, but its site will be either devoted to enlarge the market, or perhaps will be selected as the most convenient spot for erecting the new Law Courts, so much desired. Its proximity to Lincoln's Inn Fields makes the site a very desirable one."

[This suggestion is too absurd to be entertained for a moment. The locality is inconvenient and objectionable and insufficient in size for the Courts. The enlargement of the market would be all very well.]

#### SATURDAY HALF-HOLIDAY.

Mr. Baron Alderson has, since the commencement of the present Term attended at the Chambers of the Judges on Saturdays at 10 o'clock, and has given notice that he will not hold Sittings at *Nisi Prius* on Saturdays, his lordship being convinced of the practicability of closing the Courts entirely on those days.

#### NEW MEMBERS OF PARLIAMENT.

Francis William Fitzhardinge Berkeley, Esq., for Cheltenham, in the room of Granville Charles Lennox Berkeley, Esq., who has accepted the Office of Steward of her Majesty's Chiltern Hundreds.



Henry George Hughes, Esq., Q. C., for the County of Longford, in the room of Richard Maxwell Fox, Esq., deceased.

## LAW APPOINTMENTS.

On Saturday last, Mr. Montague Hughes Cookson, B.C.L., of St. John's College, was elected Elder Law Scholar. Mr. Cookson obtained a first class in classics and a first class in mathematics, at moderations, both in Michaelmas Term, 1852, and the same double honours at the final examination in Michaelmas Term, 1854. Mr. Cookson was also Senior Mathematical Scholar of the year 1852.

William Dwyer Ferguson, Esq., Barrister-at-Law, has been appointed an Assistant Commissioner of Endowed Schools in Ireland, in the room of Edward Pennefather, Esq., resigned.—*Globe*.

The Queen has been pleased to appoint Thomas Chisholm Anstey, Esq., her Majesty's Attorney-General for Hong Kong, to be a Member of the Legislative Council of that Colony.—From the *London Gazette* of May 30.

Mr. William Talbot, Solicitor, of Kidderminster, has been appointed Clerk to the Trustees of the Turnpike Roads, in the room of Mr. Thomas Hallen, resigned.

Mr. Richard John Eaton, Clerk of the Peace

at Colesberg, has been appointed Civil Commissioner and Resident Magistrate for the Division and District of Caledon, Cape of Good Hope, in the room of Mr. W. M. Mackay.

Mr. Charles Haw, Clerk of the Peace for Victoria, has been appointed Civil Commissioner and Resident Magistrate for the Division and District of Cradock, Cape of Good Hope, in the room of Mr. W. Gilfillan, deceased.

C. Temple, Esq., has been appointed a Puisne Judge of the Supreme Court of Ceylon.

Mr. James Christopher Davidson, has been appointed Civil Commissioner and Resident Magistrate for the Division and District of George, Cape of Good Hope, in the room of Mr. J. G. Aspelng, retired.—*Civil Service Gazette*.

## IRISH LAW APPOINTMENTS.

The three Crown Solicitorships on the north western circuit are finally disposed of, and the selection of the parties appointed appears to have given—what rarely happens now-a-days—general satisfaction. The new officials are, Mr. E. Geale, brother-in-law of Earl Fortescue; Mr. Thomas Fitzgerald, brother of the Irish Attorney-General; and Mr. William Henry M'Grath, son-in-law of Mr. C. O'Brien, one of the members for the county of Clare.—*Times*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

*Grainger v. Slingsby.* June 10, 1856.

WILL.—CONSTRUCTION.—“MONEY STANDING IN THE FUNDS.”—BANK STOCK.

*A testatrix, by her will, gave all her fortune, “now standing in the funds,” upon the death of her brother, a bachelor, to S. It appeared she had bank stock, 3 per cents., and bank annuities: Held, affirming the decision of the Vice-Chancellor Stuart, that the bank stock did not pass to S. under the will.*

THIS was an appeal from the decision of Vice-Chancellor Stuart. The testatrix, by her will, gave to her brother all her property, with the exception of a few pecuniary legacies thereby given, for his life, and if he should marry and have children to such children, but that if he should die a bachelor, then at his death she directed the whole of her fortune “now standing in the funds” to go to Emma Slingsby. The testatrix, at the date of her will and on her death, had bank stock and 3 per cents. and also bank annuities, and the question arose on her brother's death, a bachelor, whether the bank stock passed under the will to Emma Slingsby. The Vice-Chancellor having held in the negative, this appeal was presented.

*Wigram and Wichens* in support; *Malins and Osborne*, contra; *F. M. Nicholls* for other parties.

The Lords Justices said, that the bank stock did not pass under the will, and affirmed the decision of the Vice-Chancellor accordingly.

## Master of the Rolls.

*University of London v. Yarrow.* June 10, 1856.

CHARITABLE REQUEST.—VALIDITY OF.—PARTIES.

*Gift of a sum of consols and the testator's residuary personal estate to the University of London for certain purposes, and with gift over to the University of Dublin if the former did not within a time limited carry out such purposes: Held, that the provost, fellows, and scholars of Dublin and the Attorney-General were necessary parties to a bill against the executors to transfer the stock and pay over the residue, where the executors refused on the ground the bequest was void.*

MR. THOMAS BROWN, of Harcourt Street Dublin, by his will, dated in December, 1846, gave a sum of 30,000*l.* 3 per cent. consols and the residue of his personal estate to the plaintiffs for the purpose of founding and endowing an institution within a mile of Westminster, Southwark, or Dublin, for investigating, studying, and endeavouring to cure maladies, distempers, and injuries to which any quadruped or birds useful to man might be subject, and he directed that if the plaintiffs should decline the gift, or if from any cause the institution should not be established within 19 years after his death, the legacy was to go to the provost and scholars of the University of Dublin to maintain fellowships as therein mentioned. It appeared that on the death of the testator in

December, 1852, the plaintiffs had accepted the trust, but that the executors (the defendants) refused to transfer the stock and pay over the residue on the ground that the gift was void.

R. Palmer and Amplett for the plaintiffs.

The Master of the Rolls said, that the bill must be amended by making the provost, fellows, and scholars of Dublin and the Attorney-General parties.

### Vice-Chancellor Kindersley.

Elder v. Maclean. June 9, 1856.

SCOTCH WILL.—SEPARATE USE.—AFFIDAVITS OF IDENTITY AND OF NO SETTLEMENT.

A will in the Scotch form gave a fund to the testator's two daughters, and declared that the *ius mariti* of such daughters was excluded therefrom, and that it should not be liable to their husband's debts, &c.: Held, that this amounted to a gift to their separate use.

One of the daughters assigned and signed her name "Rebecca D." instead of "Rebecca Williams D." Her affidavit that she was the same person was held sufficient.

Held, however, that payment could not be made to her unless upon an affidavit of no settlement, although she was unmarried.

The testator, by a will in the Scotch form, gave a fund to his two daughters, and declared that the *ius mariti* of such daughters was excluded therefrom, and that the provision in their favour should not be liable to the debts or deeds of their husbands, nor subject to the demands of their creditors. The Court, on the hearing, had held that there was a trust for a separate use, and directed payment out of Court of one moiety to one of the daughters, but directed the remainder of the petition to stand over as the other daughter had signed a deed assigning her share "Rebecca Dowson" only, instead of "Rebecca Williams Dowson." Her affidavit was now produced that she was the same person. It appeared that she was resident in Jamaica and unmarried.

Bristowe in support.

The Vice-Chancellor said, this was sufficient, but that there must be an affidavit of no settlement, as the exclusion of the *ius mariti* would not have prevented her settling her share.

### Vice-Chancellor Wood.

In re Grooby's will. June 7, 1856.

CHARITABLE BEQUEST.—UNCERTAINTY IN OBJECT.—REFERENCE FOR SCHEME.

A testatrix, by her will, gave and bequeathed to the following societies and institutions, established or carried on in London, the several legacies or sums next thereafter mentioned. Among these was "the Clergy Society." The evidence was insufficient to entitle any of the existing societies to take,

and a reference was therefore directed for a scheme in favour of poor distressed clergy of the Church of England in London.

THE testatrix, by her will, gave and bequeathed to the following societies and institutions established or carried on in London, the several legacies or sums next thereafter mentioned. Among these was "the Clergy Society," and the question now arose whether the Corporation of the Sons of the Clergy, the Poor Pious Clergy Society, or the Clergy Charity of Gloucester and Bristol, was entitled.

Kenyon, Amplett, Speed, Pearson, and M. Ware for the several parties.

The Vice-Chancellor said, that the evidence was insufficient to enable the Court to assign the legacy to any one of the charities, but that a reference for a scheme would be directed in favour of clergymen of the Church of England in London in a distressed state.

### Court of Queen's Bench.

Bennett v. Thompson. June 10, 1856.

SHERIFF.—FEES FOR SPECIAL JURY PANEL.—COMMON LAW PROCEDURE ACT, 1852.

Held, that the fees formerly paid to the sheriff for a special jury panel under the scale settled by the Judges under the 7 Wm. 4 and 1 Vict. c. 55, do not apply to the altered mode of practice introduced by the 15 & 16 Vict. c. 76, s. 108.

THIS was a rule nisi on the Sheriff for Somersetshire to refund to the defendant in this action for a nuisance, the sum of 4*l.* 13*s.* which he had demanded for the copy of a special jury panel.

By the table of fees authorised by the Judges under the 7 Wm. 4 and 1 Vict. c. 55, the sheriff was entitled to 1*l.* 4*s.* for the warrant, for bailiff summoning special jurymen 2*s.* each, and 1*l.* 1*s.* for his own attendance in Court.

By the 15 & 16 Vict. c. 76, s. 108, it is enacted, that "the precept issued by the Judges of Assize as aforesaid shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding 48 in all, to try the special jury causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes, at the assizes, subject to such right of challenge as the parties are now by law entitled to; and a printed panel of the special jurors so summoned shall be made, kept, delivered, and annexed to the nisi prius record, in like time and manner and upon the same terms as heretofore provided with reference to the panel of common jurors;" and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors; provided that the Court or a Judge, in such case as they or he may think fit, may order that a special jury be struck ac-

<sup>1</sup> On payment of 1*s.* See s. 107.

and trader must be left free to conduct his enterprises on his own responsibility, guided by his own skill and his own experience.

The proposition which has so often been put forward, with a sort of boastful feeling of honesty, that a man who shares in the profits of business must bear its losses, is for the most part fallacious. He does *not* share unlimitedly in the profits; he shares only in the proportion of his capital invested; and should therefore be liable only to his fair proportion of the loss. If the project be prosperous, he receives 10 or 20 per cent. on his capital. If disaster attends the speculation, he loses his capital. True it is, that it must be known to all who deal with him that he intends to risk only a given amount of capital, either actually paid up and invested in the stock of the concern, or forthcoming whenever called for, and this information the Bill provides shall be truly given.

Let it be recollected also, that in most of these limited liability cases, the creditors are really benefited by the liability to which each partner is subject, and it is more for their interest that these limited amounts are made available, than by the present system, under which a monied man may make advances at any rate of interest,—taking a security for repayment which may be enforced in priority of other creditors—or at all events, in case of bankruptcy, he is entitled to a dividend along with the other creditors,—whereas if a partner, however limited his share, he must wait till all the creditors are paid in full, before he can receive anything, and it is only in the event of a surplus that he takes a share according to the amount of his capital.

The main object to be effected, under the provisions of the Joint-Stock Companies Bill, is that all limited companies be registered, the names of the partners or shareholders known, and the extent of liability of each duly recorded. It seems to us that this object will be effected under the Bill now before the House of Lords, and we trust that no material alteration will be made in its provisions.

The other Bill on the general Law of Partnership, applicable to companies where the members of them are less than seven, seems also to deserve the support of the Profession. According to the provisions of that Bill loans may be effected, with interest paid out of and in proportion to the profits, without subjecting the lender to the liability of a partnership; and here also it may be observed, that the creditor has no

more right to complain if the debtor be unable to pay for the goods sold to him, than the lender of money with which the business is carried on. The creditor for goods sold, does not give credit on the faith that the capitalist who receives interest in proportion to the profits will be liable. He knows nothing of him, and delivers the merchandize on the sole responsibility of the trader. If he is not satisfied with such responsibility, he may require a guarantee; but without such guarantee, he has no right to call upon a third party who was entirely unknown to him at the time of the contract, but who, instead of stipulating or lending his money for an absolute 20 per cent. interest, is satisfied with conditional interest at 10 per cent. on the profits.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### FIRE INSURANCES.

19 VICT. c. 22.

Duties to be chargeable on all insurances of property within the United Kingdom wheresoever made; sect. 1.

Persons insured chargeable with duties where insurances made by unlicensed foreign companies; s. 2.

All persons who shall as agents receive proposals, &c. for insurances by companies out of the United Kingdom deemed to be persons keeping an office for insuring property from loss by fire. Such persons required to take out licence and give security for payment of the duties. Penalty for neglect; s. 3.

Persons keeping offices for insurances on behalf of foreign companies to be chargeable with the duties on such insurances; s. 4.

Not to limit charge of duty under former Acts, nor to charge insurances exempted; s. 5.

Re-insurances from loss by fire not to be chargeable with the per-centage duty, but with the policy stamp only; s. 6.

The following are the Title and Sections of the Act:—

An Act to amend the Laws relating to the Duties on Fire Insurances. [June 5, 1856.]

The preamble recites as follows:—

Whereas, under and by virtue of certain Acts passed in that behalf, persons insuring or keeping an office for insuring property from loss by fire are required to take out licences for that purpose from the Commissioners of Inland Revenue, and to give security by bond for duly rendering accounts of such insurances and paying the duty chargeable in respect

thereof, and a certain stamp duty is by law chargeable upon any policy or other instrument whereby any insurance is made of or upon property from loss or damage by fire, and a further duty at and after the rate of 3s. per cent. per annum, is also chargeable in respect of every such insurance; And whereas a practice has been established of insuring from loss by fire property situate within the United Kingdom by foreign companies or by policies or insurances made abroad, and it is expedient that all such insurances should be subject to the same duties as the like insurances made by companies within the United Kingdom are now by law chargeable with: Be it therefore enacted as follows:—

1. The said respective duties by the said Acts granted as aforesaid shall extend to and be payable and paid for and in respect of every insurance of property situate within the United Kingdom from loss or damage by fire, whether the same shall be made by any company, society, or person or persons within or out of the United Kingdom, and whether the policy or other instrument, note, or memorandum of or relating to any such insurance shall be made, signed, or issued in the United Kingdom or elsewhere, and whether there shall be any such policy, instrument, note, or memorandum, or not.

2. Where any such insurance as aforesaid shall be made by any company, society, or person or persons out of the United Kingdom, the person insured shall be chargeable with the duties payable in respect of such insurance, and shall pay the same to some agent of such company, society, or person or persons who shall be duly licensed as hereinafter-mentioned, or, if there be no such agent, then to the Receiver-General of Inland Revenue, or some other officer appointed by the Commissioners of Inland Revenue to receive the same, setting forth the particulars of such insurance in such form as the said Commissioners shall require, and in default of such payment the said duties shall be a debt due from him to her Majesty, her heirs and successors, and be recoverable in the manner provided by the 8th section of the Act passed in the 14 Vict. c. 97, or by any other mode by which any such debt may be recovered.

3. Every person in the United Kingdom who shall as agent receive or accept any proposal or instructions for the insurance of property from loss or damage by fire by any company, society, or person or persons out of the United Kingdom, or who shall keep or have or conduct or manage any office or place for accepting or receiving or issuing any such proposals or instructions, or who shall be held out by any public advertisement or notice, with his consent, as a person to or by or from whom any such proposals or instructions may be given or received or obtained, or through or by means of whom any such insurance as aforesaid may be affected, and every person who shall in any manner effect or negotiate or be concerned in effecting or negotiating any

such insurance as aforesaid for or on behalf of any such company, society, or person or persons as aforesaid, or who shall issue or deliver out any policy or other instrument or any note or memorandum of or relating to any such insurance as aforesaid, made or proposed or intended, shall be held and deemed to be a person keeping an office for insuring property from loss by fire within the meaning of the several Acts before-mentioned, and shall be and is hereby required to take out a proper licence in that behalf, and to give security in the manner directed by the said Acts respectively, and in such form as the Commissioners of Inland Revenue shall think proper, for accounting for and paying the duties with which he shall be chargeable as hereinafter-mentioned; and if any such person hereby required to take out such licence and to give such security as aforesaid shall neglect or omit so to do, he shall forfeit the sum of 100*l.*, and the like penalty for every day that such neglect or omission shall continue.

4. Every person who by reason of any such Act or means as in the preceding clause mentioned shall be deemed to be a person keeping such office as aforesaid within the meaning of this Act and the several Acts aforesaid shall account for and shall be chargeable with the duties in respect of all such insurances as aforesaid made or undertaken or agreed to by any company, society, or person or persons out of the United Kingdom for whom or on whose behalf or in respect of whose business of insurance he shall do any such act as aforesaid, or become a person keeping such office as aforesaid.

5. Provided always, That nothing herein contained shall extend to limit or restrict the charging of the said duties under any former Act now in force, or to charge with duty any insurance expressly exempted by any such former Acts.

6. And whereas a practice prevails amongst certain insurance companies, on their granting policies of insurance from loss by fire for large Sums, to procure from other companies, in consideration of portions of the premiums for such insurances, indemnity by way of guarantee in case of any such loss happening, against the payment of certain parts of the sums insured, and it is expedient to exempt such indemnity or guarantee from the yearly per-centage duties which would otherwise be chargeable in respect thereof as an insurance from loss by fire: Be it enacted, That where an insurance from loss by fire shall be made by any company who shall duly account for and pay the full and proper duties chargeable in respect thereof, the yearly per-centage duty shall not be payable in respect of any re-insurance effected by such company with any other company by way of indemnity or guarantee against the payment on the original insurance of any portion of the money insured thereby, and no other duty than the stamp duty of 1*s.* chargeable upon a policy of insurance from loss by fire shall be payable upon such re-insurance.

## BANKERS' COMPOSITIONS.

19 VICT. c. 20.

The preamble recites the 7 & 8 Vict. c. 32.

Section 25 of the said Act repealed; s. 1. Compositions continued; s. 2.

The following are the Title and Sections of the Act:—

An Act to continue certain Compositions payable to Bankers who have ceased to issue Bank Notes. [5th June, 1856.]

Whereas under sections 23 and 24 of the Act of the Session holden in the 7 & 8 Vict. c. 32, certain compositions are made payable by the Governor and Company of the Bank of England to bankers who have discontinued the issue of their own bank notes; and by section 25 of the said Act it is provided that all such compositions shall, if not previously determined by the Act of such banker as thereinbefore provided, cease and determine on the 1st day of August, 1856, or on any earlier day on which Parliament may prohibit the issue of bank notes: And whereas it is expedient to provide for the further continuance of such compositions: Be it enacted as follows:

1. Section 25 of the said Act shall be repealed.

2. All the compositions payable under the said Act as amended by this Act to bankers who have discontinued, or who shall agree with the said Governor and Company to discontinue, the issue of their own bank notes, shall, if not previously determined by the Act of such bankers as by the said Act provided, and unless Parliament shall otherwise provide, continue in force, and be payable until Parliament shall prohibit the issue of bank notes as defined by section 28 of the said recited Act, or until the exclusive privileges of the said Governor and Company mentioned in section 27 of the said Act shall be determined in pursuance of such section, or otherwise be determined or altered by authority of Parliament.

## NOTICES OF NEW BOOKS.

*The Metropolitan Building Act, 18 & 19 Vict. c. 122; together with such Clauses of the 18 & 19 Vict. c. 120, the Metropolitan Local Management Act, as more particularly relate to the Building Act: with Notes, a Glossary of Architectural Terms, and full Index.* By HUMPHRY WILLIAM WOOLRYCH, Serjeant-at-Law. London: Stevens & Norton; H. Sweet; and W. Maxwell. 1856. Pp. 173.

MR. SERJEANT WOOLRYCH is well known as the author of several useful works on Rights of Common, on Inclosures, on the Law of Sewers, Ways, and Watercourses (besides Treatises on several other subjects),

and has now laid before the Profession an accurate edition of the Metropolitan Building Act, 18 & 19 Vict. c. 122, with Notes and such parts of the Metropolitan Local Management Act, 18 & 19 Vict. c. 120, as relate to metropolitan buildings. Thus are brought together all the provisions of the law regarding the buildings of this vast city. The learned Serjeant has also given a general view of the Law of Building independently of the recent enactments.

The introduction to the work clearly explains the scope of the Statute. The Author says:—

"Not satisfied with the Act of 1844, concerning Metropolitan Buildings, or deeming a change unavoidable, the Legislature has passed a Statute entirely new. The officers entrusted with its execution have been changed, the mode of building has been relaxed, the duties of the district surveyor have been defined afresh, and it has been endeavoured to place the rights and liabilities of building and adjoining owners upon a different footing.

"The Metropolitan Board of Works supercedes the Official Referee of 1844, and the Commissioners of Sewers, together with the Police Commissioners, have confided to their care the protection of the community from the evils of dangerous structures. The first portion of this Act regulates buildings in general. It begins by specifying some places which are not subject to the Act, as the Bank of England, the India House, &c. It then speaks of buildings new, altered, added to, or rebuilt. It then passes on to the structure and thickness of walls, prescribes what recesses and openings the walls may receive, and treats generally of the necessary constitution both of external and party walls.

"Roofs are to be erected with a view to security, and chimnies with their flues are especially dwelt upon with an evident regard to safety against fire.

"The cellerage and conveniences of rooms in the metropolis are lightly touched upon, and penalties are awarded against disobedience to the rules laid down.

"There are arches over and under public ways, and there are, moreover, party arches. It is provided that these shall be sufficiently substantial, and, if iron, that the district surveyor shall signify his approval of them.

"We next come to projections, and to the separation and union of buildings. Open spaces must be kept near dwelling-houses, and, to conclude this part of the subject, all public buildings (except those exempted by the 6th clause) are placed within the superintendence of the district surveyor and the metropolitan board.

"The duties of the district surveyor and the powers of the metropolitan board are detailed at length. The surveyor may be paid by fees or by salary, as the board may determine. But there is an officer called the superintending

architect, who, with his clerks, is to be paid by salary; but who must not follow any other occupation.

"The second part of the Act is devoted to the consideration of dangerous structures. Upon an intimation of danger a survey is to be made under the direction of the Commissioners of Sewers or of the Police, to whom notice is in the first instance to be given by the district surveyor. This certificate is the report upon which the Commissioners are to act if it be unfavourable to the structure, and power is given to proceed before a justice to compel repair, and even to sell the property, if the requisitions be not complied with.

"It is very properly ordained, that inmates may be removed from these dangerous buildings by constables, and they shall be received into the workhouse if they have no other place of abode.

"Party structures embrace the third particular of the Metropolitan Building Statute.

"The rights of the two owners, the building and adjoining owner are separately dealt with. The one owner may build, but, unless in case of danger, he must give notice of such his intention to the other owner. The expenses are to be borne by these owners in proportion, regard being had to the use which each owner makes of the structure.

"The fourth part is a miscellaneous collection, in the early part of which the persons, 'building and adjoining owners,' are more particularly defined. The expenses above mentioned must be repaid; if not satisfied by the owner, they will fall, in the first instance, on the occupiers, who may deduct the sums paid from the rent due to the landlord. Should there be more than one owner, the rule of contribution must be applied. The owner under sect. 3 is interpreted to mean the person in possession or receipt of the rents or profits, or the occupier other than tenant from year to year, or tenant at will. Hence, a tenant for more than a year may be classed amongst the owners, and, as all owners are to contribute according to the use which each makes of the structures, the occupying tenant, who has no inconsiderable share of the benefit of party structures, must have his share of the costs of repair or improvement. Certainly the occupier of premises who has paid any expenses under the Act is entitled to deduct his payment from the rent by virtue of No. 5 in sect. 9; but this occupier must mean an occupier from year to year, or at will, and not a tenant for years. For, immediately afterwards, power is given to an owner to deduct from his landlord's rent any sum beyond his due proportion. There are few expressions which lead to more confusion than those of owner and occupier. But the Statute may be read with sufficient consistency, if the word owner be referred to owners in the ordinary sense of that word and occupiers for more than a year. Occupier, under the Act, will then mean a tenant at will, or from year to year, or for any less term.

"The residue of these provisions is employed

in setting forth the procedure, in declaring the repeal of Acts upon the same subject, or other collateral matters, and, finally, in directing compensation to the official referees, the registrar, and others whose offices have been abolished."

Numerous alterations are taking place in the law district, as well as all other parts of the metropolis, in the pulling down and rebuilding of houses; and it may therefore be useful to call the attention of our readers to the extent of the precaution necessary in providing hoards and shorings or supports to adjoining buildings. In the notes to the present Act, the Author says:—

"It is not to be supposed that any person who builds a house at the extremity of his land is at once to become so far entitled to a secure foundation there as that his adjoining neighbour may not use his own land as he pleases, even although he may, in so doing, damage the house. It is his duty to protect himself by shoring. If his neighbour digs his land near to the foundation of the new house, so as nevertheless, not to touch the other's soil, although by such digging the house falls into the pit, no action lies. It was the fault of the builder to erect his house so near to the stranger's territory (*Wilde v. Ministerley*, 2 Ro. Ab. 564; 15 Car. 1). So if a man build a house and make cellars upon his own soil, whereby a house newly built upon the adjoining soil falls down, no action lies (*Stansell v. Jollard*, Selw. N. P. 435). The plaintiffs were owners of a house in Cheapside; the defendants were owners of the adjoining dwelling. The defendants' house, being in bad repair, had, for many years, been supported by struts or shores placed against the house; at length it became necessary to rebuild it, and during the progress of the work the shores were removed. No supports being substituted by the defendants, the plaintiffs put up some internal supports, and it appeared that if the house had been properly shored internally no injury would have happened. No notice had been given by the defendants to the plaintiffs to shore up the house, but that was not alleged in the declaration as a ground of injury. Upon these facts Lord Tenterden directed a nonsuit, being of opinion that the plaintiffs should have sufficiently propped up their own premises. It was then moved to set aside the nonsuit, 1st, because the defendants were answerable; and 2nd, because they had given no notice. But the Court discharged the rule. As to the point of notice, it was not alleged as the breach, and therefore the Court would give no opinion whether a notice was or not necessary. And upon the main question, the liability, it was in proof that the defective state of both houses was known to both parties; and there was no evidence to show any grant to the plaintiffs of a right to the support of the adjoining building. No such grant could, consequently, be inferred (*Peyton and others v. The Mayor, &c., of London*, 9 B. & C. 725)."

Buildings which are in a dangerous state on complaint to the Commissioners may be surveyed, shored up, and notice given to the owner or occupier requiring him to take down, secure, or repair the same, as the case may require; and the inmates may be removed by an order of the justice of the peace, and in certain cases the Commissioners have power to sell dangerous structures (ss. 69, 72, 73, 74, 80).

The provisions in the Act as to the party liable to pay the expenses of carrying the provisions of the Act into effect are fully observed upon by the Author. He says:—

“The words owner and occupier are often productive of confusion, and require at all times to be carefully dealt with. The meaning of this Act, with reference to these terms, seems, however, to be sufficiently obvious. Under the old law a tenant at rack rent was not liable to contribution. (*Southall v. Ledbetter*, 3 T. R. 458; *Stone v. Greenwell*, id., 461; *Beardmore v. Fox*, 8 T. R. 214.) Neither was a tenant liable who had much improved his premises, and thus became possessed of a beneficial interest (*Lambe v. Hemans*, 2 B. & Ald. 467); but, latterly such an occupier has not been discharged, and herein the present Statute follows the 7 & 8 Vict. c. 84, s. 49, which it supersedes.

“Certainly, if there be an independent agreement between landlord and tenant, that would stand upon a different foundation. Indeed, in the case of dangerous structures, there is an especial provision (sect. 73) to protect the right of the lessor. The owner, being in possession, must pay these expenses, in the first instance.

“The owner of the improved rent, being in possession, must do the same and charge his next landlord with contribution. The owner of a beneficial lease will stand in the same position. The occupier under a lease for years is an ‘occupier’ within the clause, although he is also an owner under the interpretation clause (sect. 3). He must pay upon default of the owner, and must look for indemnity (if any) from his landlord; and under sect. 97 (No 5), he may deduct the amount from his rent. The occupier, however, shall not pay more than the rent due or to become due thereafter in respect of the premises. Whether that rent is at once to be calculated, so as to pay off the debt in full, or to be redeemed, so as to pay the debt by instalments, is not particularly specified. The same rules apply to the occupier from year to year, or at will.

“This clause would seem to invite landlords to introduce covenants into their leases for their tenants to pay all expenses attending the execution of the Building Act. The 11th section, moreover, expressly saves all liabilities as between landlord and tenant.”

This last observation of the learned Serjeant should receive the attention of our conveyancing friends in preparing future leases.

The notes to the Act are valuable to all who are engaged in carrying its provisions into effect or considering the alterations made in this department of the Law.

## CONDUCT AND CHARACTER OF ATTORNEYS.

OUR attention has recently been called to several cases regarding the misconduct of Attorneys, which the Incorporated Law Society has felt bound to bring to the notice of the Superior Courts at Westminster.

On the other hand, it may not be inappropriate to record the opinions pronounced by eminent Judges on the exemplary conduct, honour and integrity of the general body of the Profession.

On a bill filed by parties interested under a will against the sole acting trustee and executor, and against his solicitor, under whose advice the trust property had been improperly sold out by the trustee and applied principally to the solicitor's use, praying that the stock might be replaced, the Court at the hearing, after directing certain inquiries, ordered that the solicitor should show cause why, having regard to his answer and the evidence in the cause, his name should not be struck off the Roll of Solicitors of the Court of Chancery.

After hearing the case urged on the part of the attorney, Lord Justice Knight Bruce (then Vice-Chancellor) observed, that if the conduct on the part of a solicitor could be attributed to want of prudence, to want of knowledge, or to both—if there was an absence of desire to benefit himself, and of bad intention, it would, probably, (however glaring the irregularity) be harsh, and, if not wrong, yet not requisite, to say that he had placed himself under any other than a civil responsibility merely; and he had endeavoured to bring himself to think it possible, reasonably, to take that view of the transaction in question. He had misgivings as to the propriety of continuing the solicitor in an honourable profession, the upright performance of the important duties belonging to which was of such high interest to society. He had paused, however, upon the fact that, at the period in question the solicitor was only 25 years old—upon the circumstance that he had lost his father in his boyhood—upon the restitution, though late, that he had submitted to make—upon the amount of costs to which he had been subjected by this Court—upon the sense which he, by his counsel, had stated himself to entertain of the nature of the transaction. Pausing on these considerations, he abstained from proceeding further in the matter—trusting that the Solicitor would manifest a proper sense of what he owed to himself, to his family, and to the Profession of which he was a member—

“A Profession,” (said the learned Judge)

"the powers of which, for good or ill, as far as the worldly interests of the mass of mankind were concerned, could scarcely be too strongly stated,—a Profession owning, he was happy to be able to say, so many who would do honour to any calling, and who, well aware that sincerity and integrity were the surest guides to prosperity and distinction, were true and just from higher motives and less worldly considerations.

"Let it be the study and ambition of the solicitor in question to become deserving of being ascribed to that class of solicitors;—a class meriting and receiving the countenance and protection, the respect and esteem, of those in whose hands was placed the administration of justice;—among not the least urgent of whose duties on the other hand, it was to mark, to censure, to repress, and, if necessary, to extirpate from the Courts such men, as, by abusing the functions and privileges of so important a Profession, become a scandal and pestilence to society." *Goodwin v. Goswell*, 2 Coll. 457.

## PRACTICE REGARDING THE RE-ADMISSION OF ATTORNEYS.

A DECISION of the Court of Queen's Bench on the last day of last Term, somewhat alters the practice relating to the mode of re-admitting Attorneys who have been struck off the Roll for misconduct. In accordance with this decision, it appears that an application to restore an Attorney to the Roll should be in the form of a rule nisi to be served on the Incorporated Law Society as Registrar of Attorneys and Solicitors.

The question we refer to, arose on the application of Sir F. Thesiger for a rule in the case of *Richard Sill*.

Mr. James Wilde was instructed to appear on the part of the Incorporated Law Society to watch the proceedings and to see that the facts were correctly stated to the Court.

The Lord Chief Justice intimated that the Court would not order the re-admission by a rule absolute in the first instance. By the 7th section of the Examination Rules of Hilary Term, 1853,—“On an application to re-admit an attorney who has been struck off the Roll, the applicant shall, before the commencement of the Term next preceding that in which he intends to apply to be re-admitted, give notice thereof as in the case of an original admission, and the affidavits in support of such application shall be filed at the office of the Master, and a copy thereof left at the chambers of the Lord Chief Justice of the Court of Queen's

Bench before the Term on the last day of which the application for re-admission was intended to be made, and the rule for such re-admission shall be drawn up on reading such affidavit and an affidavit of such copy having been left and notice given in compliance with this rule.” It does not say the rule is to be absolute in the first instance.

Mr. Hodgson said, that last Term a similar application was made in the Court of Common Pleas. He appeared for the Law Society in opposition to the rule, and there the course proposed was taken.

Lord Campbell.—If cause is shown in the first instance, that may be so,—but unless we have cause shown against the rule we certainly shall not agree to it. In a case where an attorney has been struck off the Roll for misconduct there is a *prima facie* case against his admission. Although the Court has always been willing either to review its former decision, or on new matter being introduced, or thinking that the punishment had been enough that has been already suffered, the Court will be ready to hear an application.

After some further discussion on the proper course of proceeding in such cases, the Judges conferred, and the Lord Chief Justice said, “the Court think you may move for a rule to show cause and that will be the proper mode of proceeding. The rule may be served on the Incorporated Law Society as has been done hitherto; we are aware of nothing to alter that course. You had better proceed to move for your rule to show cause.”

Sir F. Thesiger then proceeded to move for a rule nisi. He said Mr. Sill was struck off the rolls by the order of this Court on the 6th May, 1853. He had been 23 years an attorney, and was a gentleman of education, station, and ability; but unfortunately in 1852, he was retained as an attorney in a prosecution which was brought against three persons of the name of Broome, Staden, and James, a case which obtained considerable notoriety, and was known as “the Brighton card-cheating case,” the person victimised being a young man of the name of Hamp. It was the great misfortune of Mr. Sill's life that he was engaged in that prosecution, for the defendants were persons of very dangerous and desperate character. He became particularly obnoxious to them in consequence of the part he took in the prosecution; and unfortunately by want of caution and discretion—the Court might be disposed to put it higher—he placed himself in their power, and they determined to take proceedings to crush and ruin him; and three different indictments were preferred against him by these parties in respect of two bills of exchange for 120*l.* each, which he had received from the brother of Broome, and which he stated he received as costs for the different proceedings connected with the prosecution. The first indictment was for assaulting the Broomes and



putting them in bodily fear, and also for taking from them these bills. That indictment was removed by *certiorari* to the Court of Queen's Bench, and it came on for trial at the sittings after Trinity Term, but no counsel or witnesses for the prosecution appearing, an acquittal took place. The second indictment was preferred for taking these bills as a reward for compounding the prosecution, and for obtaining them by false pretences. Those pretences were afterwards made the subject of a third indictment, on which Sill was ultimately convicted. In respect to the second indictment, which involved the same matter on which Sill was afterwards removed from the rolls, a similar course was taken as in the first. The indictment was removed by *certiorari* to this Court, and came on during the sittings after Trinity Term; but when the case had been partly opened, it was stated that the witnesses were not in attendance, and a verdict of not guilty was again returned. In order that their lordships might be satisfied that this was not owing to an arrangement between Sill and the parties prosecuting, he might remind them that a third indictment was preferred; and this contained the charge for obtaining the bills under false pretences, and though he was advised by counsel to plead and might have pleaded in answer to it *autre fois acquit*, he declined to do so, but determined to take his trial upon that indictment; but unfortunately, the result was that in August, 1852, he was convicted.

The Incorporated Law Society, in discharge of their important duty, which they most faithfully performed, brought that conviction under the notice of the Court, and applied to have Mr. Sill struck off the Rolls. In the meantime, however,—viz., in January, 1853,—the judgment upon that indictment was set aside on, it was admitted, a technical objection. In the same month, Mr. Sill preferred an indictment against Henry Broome, the brother of John Broome, one of the conspirators, for perjury. It came on for trial before Lord Campbell, at the sittings after Hilary Term. Mr. Sill was examined at very considerable length, and he had two witnesses to prove the perjury, but, unfortunately, with that fatality which seemed always to attend his proceedings in this matter, they did not appear when called upon; but it appeared from the affidavits that they had just left the Court, supposing that Mr. Sill's examination would last much longer, and when they came back they found that a verdict of acquittal had been returned. Under these circumstances the question as to striking Mr. Sill off the Rolls came before the Court in May, 1853, the only ground for the application being the conviction already mentioned, no affidavits having been put in or anything else stated with regard to his conduct. On that occasion Mr. Sill conducted his own case in person, and he brought before their lordships, in affidavits, all the matters connected with these transactions, in order that they might form an opinion

as to whether the conviction was so far satisfactory as to induce the Court to strike him off the Rolls. The Lord Chief Justice, in giving judgment, observed, that he could not say that the conviction, even on its merits, could be supported; but it so happened that, upon the account of the transactions in the affidavits of Mr. Sill, their lordships came to the conclusion that he had been dealing improperly with the parties, and obtained those bills of exchange for the purpose of stopping the prosecution; and they pronounced the most extreme sentence which could be passed upon an attorney, by excluding him altogether from the Rolls. This sentence, however, was passed in respect of matters which were not preferred against him, but arose incidentally in the affidavits. No steps were taken by the Incorporated Law Society to remove him from the Rolls of the Court of Chancery and the Court of Common Pleas, and his name still remained upon them; but being under the sentence of their lordships, he did not attempt in the smallest degree to practise in those Courts. From May, 1853, until July, 1854, he was wholly without employment. At the end of that period he had the good fortune to attract the attention of two most respectable attorneys at Walsall—Mr. Duignan and his partner—who had employed him up to the present time as their managing clerk; and so satisfied were they with his conduct that they were ready to admit him as a partner in the firm 12 months after he should be again re-instated on the rolls. He had conducted their very extensive business at the Assizes, the Sessions, the County Court and before the magistrates; and all the persons who had become acquainted with him while so engaged had pressed forward to express before their lordships their opinion as to his admirable conduct, honour, and integrity. Among others who spoke to his character were the County Court Judge (Mr. Serjeant Clarke), Mr. Wateley, Q. C., the member of Parliament for the Borough, and several magistrates. Under all the circumstances he (Sir F. Theigier) trusted their lordships would think that Mr. Sill had undergone a sufficient punishment for whatever offence he had been guilty of, and that the heavy sentence inflicted upon him might be remitted, and his name placed again upon the rolls of the Court.

The Court then granted a rule to show cause why the re-admission should not take place—the rule to be served on the Incorporated Law Society, and leave was given to bring it on the second day of next Term.

<sup>1</sup> Mr. Sill's last certificate having expired in November, 1852, he could not after November, 1853, practise without the leave of the Court or a Judge (which of course would not have been granted), and consequently it was unnecessary to incur the expense of making the several applications to the other Courts.

## LAW OF COSTS.

## OF SUIT BY SURETY FOR CONTRIBUTION.

THE plaintiff, who was one of the sureties for securing the due performance of the duties of a tax collector, was called on to pay, and paid the amount due from him on his principal failing in the performance of the obligations. He filed a bill to have contribution against the representatives of the solvent co-sureties, alleging that the others were insolvent, and it was required by the answer that these persons, although insolvent, should be made parties. Held, by the Vice-Chancellor *Kindersley*, that the insolvent sureties must pay their own costs of being brought before the Court to the final hearing of the cause. *Hitchman v. Stewart*, 3 *Drewry*, 271.

## OF PETITION BY TENANT FOR LIFE SERVED ON MORTGAGEES UNDER LANDS' CLAUSES' ACT.

THE tenant for life of a fund paid into Court by a railway company on the purchase of certain estates required by them, presented a petition for its investment, and for payment of the dividends for himself. Certain persons, entitled to a charge on the real estates were served with the petition and appeared. The Vice-Chancellor *Stuart* refused to direct the railway company to pay their costs. *In re Webster's Settled Estate*, 2 *Smale & G. vi.*

## NOTES ON RECENT STATUTES.

## COMMON LAW PROCEDURE ACT, 1852.

## LEAVE TO DEFEND AN ACTION OF EJECTMENT.

Held, that a person who had recovered judgment in an action of ejectment upon the forfeiture of a lease by reason of breaches of covenant, is not entitled to come in and defend an action of ejectment, under the 15 & 16 Vict. c. 76, s. 172, where he had not actually obtained possession. *Thompson v. Tompkinson and others*, 11 *Exch.* 442.

## CONCURRENT WRIT OF SUMMONS.

An original writ of summons was tested on April 9, 1851, and was duly continued by alias and pluries, and was in force when the 15 & 16 Vict. c. 76 came into operation. It was first renewed under that Act, on November 30, 1852, and was afterwards renewed within every six months,—the last renewal being May 18, 1855. On June 16, 1855, a concurrent writ was

issued for service upon a British subject residing out of the jurisdiction, and the defendant was served on July 14. This writ was tested April 9, 1851.

On a rule to set aside the concurrent writ and the service for irregularity, *Parke, B.*, said, "We have considered the case, and looked at the different clauses of the Act, are of opinion that a concurrent writ can only be issued within six months from the time of issuing the original writ. In this case, the first renewed writ under the Common Law Procedure Act, 1852, became *quasi* the original suit; but then the concurrent writ should have been issued within six months from the time of issuing that writ. Such is the plain language of the Act. This concurrent writ having been issued after that time, must be set aside, but as this is a new point of some importance, without costs." *Cole v. Sherard*, 11 *Exch.* 482.

## LEGAL EDUCATION:

## REDUCTION OF STAMP DUTY AND INCREASE OF QUALIFICATION.

## To the Editor of the Legal Observer.

SIR,—Once more I would venture to trespass on your columns, in explanation of my views with regard to the reduction of stamp duty on articles of clerkship with attorneys and solicitors. The subject is important to the Profession, but more especially to their subordinates, who are, I believe, as a body, more numerous than bankers, merchants, stock-brokers, or any other class of clerks in the community.

In my remarks on the character of ordinary law clerks, I was far from wishing to make any uncharitable reflections: I was simply desirous of echoing the general opinion, with a view to counteract the effect of the too favourable representation which had been given; as if to make it appear, that their condition was so satisfactory as to be incapable of amendment. The United Law Clerks' Society, I am under the impression, is a kind of benefit club, and the members, therefore, are justly deserving credit for their economy and prudence, but their connexion with it cannot be legitimately adduced to prove their morality and religion. Moreover, the members of that praiseworthy institution form only a per-centage of the great mass, and are therefore exceptions and not the rule.

The evidence offered to prove the evils resulting from the present system, has been curiously applied by your correspondent. His argument is similar to that of the American Slaveholders against Negro Emancipation—to point to their degradation,—the result of a pernicious system,—and then ask, how the restrictions can be safely removed. Let the

cause be removed and then the effect will be found very different. Nor do I conclude the depravity of law clerks from their poverty, as "L." seems to suppose. Poverty is not a crime, but nevertheless, *magnum pauperies opprobrium jubet quidvis et facere et pati, virtutisque viam deserit ardua* (Horat).

Higher qualifications being made essentially requisite in connexion with the reduction of the stamp duty; it would afford no facilities for the introduction of the idle, the worthless, and the depraved, but would offer every inducement for a better class of clerks to seek engagements in a solicitor's office.

The elevation of ordinary clerks by their employers to the position of those who have been articulated by their friends or at their own expense, is an injustice to articulated clerks—not to the Profession, as I imagine has been assumed. If I had an articulated clerk serving without salary, &c. &c., and a general clerk who exhibited remarkable diligence and intelligence, I consider the former would have strong grounds for complaint if I placed the latter with him on a professional equality. The necessity of a higher standard of legal attainments is unanimously admitted, and the demand will soon become irresistible. But it is evident that the proposed addition of classical, mathematical, and literary qualifications as requirements from the Candidates, cannot be effected without the intervention of the Legislature; and feeling that if the stamp duty is to be reduced at all, it must be done at the same time, I am reluctant to accede to a partial reformation. Your correspondent "L." expresses himself highly favourable to altering the qualifications, but still refuses to admit the justice and expediency of reducing the stamp. In my estimation, the latter is not the least important, as an alteration that would effect a radical change in the constitution of the legal body,—as likely to be productive of the greatest benefit,—and as the only remedy for the *Μεγιστον των κακων*.

Your correspondent appears to regard the removal of the pecuniary barrier, as opening a clear way for a general rush in the ranks of the Profession. It is true there are some who seem to consider that everything consists in their being articulated, who postpone their qualifications till the close of their term of clerkship, and then are terrified and dismayed at the prospect, even of the present very inadequate examination. But it must be remembered there are other things often more difficult for a young man to manage than defraying the expenses attending his being articulated. A practising solicitor must be found, willing to take him as clerk,—five years' service must then be completed,—an examination must be satisfactorily passed, rigorously testing his proficiency (for though a stricter examination might be introduced without reducing the stamp, it would certainly be most imprudent to make any reduction without increasing the qualifications). Then he has to be admitted on the Rolls of the various Courts, and, to practise, must take out

an annual certificate, which, if once omitted, may cancel all his previous qualifications.

If the alterations proposed were carried into effect, the members of the Profession would still possess entire control over the introduction of its new members. A clerk would first have to prevail on his principal to enter into a written contract to give him all necessary instruction. A stranger would not do it, any more than a tradesman would take an apprentice, without a premium. The result, therefore, would be, that employers in promoting their deserving clerks, would be relieved from the chief expense; the gift of articles would probably be a favour more freely bestowed, although from the high qualifications ultimately necessary for admission on the Roll, its full advantages might not be more frequently realised than under existing regulations.

An alternative originally proposed, in connexion with reduction of the duty, appears to have escaped attention, namely,—increasing the fees on admission. This would prevent any inundation of small practitioners, which would be anything but desirable, and at the same time afford more encouragement than at present to students of the Law. Solicitors are at present placed in a situation of peculiar difficulty in finding clerks thoroughly qualified to fill posts of responsibility, on account of the risk in employing those who have been admitted and are fully privileged to practise, and may be seeking to establish a connexion for themselves. Now a clerk examined, but not admitted, would possess every advantage, and none of the disadvantages, of duly attested legal attainments, if rendered unable to encroach on his principal's practice, by neglecting to exercise, and perhaps by forfeiture of the right to admission.

I would ask,—was the reduction of the stamp duty one-third, by 16 & 17 Vict. c. 63, attended with any mischievous results? and of what use is the present imposition? Who are benefited by it? "L." has urged the burdens of the late war as a reason for postponing their repeal. If he proposes to continue it until it has defrayed those expenses, he may as well throw in the national debt as far as the present and many future generations are concerned. We may safely assume, I think, that the number annually being articulated, is not greater than those examined; taking the last examination as an average, the gross annual amount would not exceed 30,000*l*. What sensible proportion does this sum bear to the national revenue. It humbly strikes me that in the present case we should not be unpatriotic in confining our attention to its results on the Profession—regardless of it not being *Οφελιμος τη πολιει*. And as to the utility of it; I would again, with all due deference submit, that it neither affords "security to the Public, nor satisfaction to the Profession" (as a body), "of the wealth and respectability of the aspirants." The public

<sup>1</sup> This applies rather to the repeal of the certificate duty than the stamp on articles.

would be more secure were it expended in adding to their qualifications; and the Profession (individually) would have a better opportunity of judging the worthiness and respectability of candidates, by long and intimate connexion with them as office clerks. No principal would enter into a contract in writing, or bind himself to keep a clerk five years, without having full and satisfactory evidence as to his general character, much less give him his articles unless he was worthy of his confidence, and in every respect deserving patronage and encouragement.

For the many reasons I have adduced, and others too numerous to mention, I feel persuaded that any candid and unprejudiced person would be fully satisfied that a reduced stamp duty, combined with an increased qualification, would be sufficient security to the Public. The Profession of the Law must never be exercised by inexperienced or incompetent persons. Other callings may be followed by those not duly qualified, but rarely with success; and their failure only serves as a warning to others, without inflicting any serious inconvenience on the Public. But there are professions which, from their nature, are most liable to be practised by unqualified persons, and their improper exercise is attended with such serious public evils, that it is necessary they should be placed under restrictions by the legislature. Hence it was wisely enacted that no person should exercise the professions of physicians, surgeons, and apothecaries, or solicitors and attorneys, without being first examined and pronounced duly qualified. By various Acts and charters (28 Hen. 8, 5 Car. 1, 40 Geo. 3, 7 Vict., 55 Geo. 3) the exercise of the medical profession is confined to those who have been examined and certified according to regulations therein provided. But there is no heavy stamp payable, not even by those required to be articulated for five years to apothecaries. What necessity was there for making articles of clerks to attorneys a special exception in the Schedule to 16 & 17 Vict. c. 59. The Medical and Legal Professions, in many respects, are precisely similar: they are both placed under restrictions by Parliament; both are entrusted with investigating the qualifications of their members. The doctor and the lawyer must always be men of skill: one is concerned for the body, the other for the estate. And probably the professional man entrusted with the care of the former, has a more serious charge than the latter. Life once lost through an unskilful practitioner, there is no recovery; but an estate lost may be wrested back by its rightful owner. Surely the same object may be attained, the same evils prevented, by the same regulations and restrictions. Now it is a very curious thing doctors have not got such a bad name as lawyers; yet their profession has no pecuniary barrier to preserve its respectability, nor is its absence attended with any of those evil results which seem to be considered as the inevitable consequences of repealing the stamp duty. I would venture, therefore, to submit

the condition of the medical profession as an illustration of the probable effects to the Legal Profession of the proposed amendments.

In taking leave of this subject, especially with regard to that important alteration in which I have appeared as solitary advocate, I cannot but regret that it has not fallen into abler hands than mine. I must, however, rest content with having brought it under the notice of the Profession, and leave it to its merits. The Incorporated Law Society will doubtless do its duty. Time would but show its beneficial effects, and experience prove that an equal start being afforded to all, the worthy alone will bear away the prize. B.

## SUMMER CIRCUITS OF THE JUDGES, 1856.

*Crowder, J.*, will remain in Town.  
NORFOLK.

*Lord Campbell, C. J. and Coleridge, J.*  
Thursday, July 10, Aylesbury.  
Saturday, July 12, Bedford.  
Wednesday, July 16, Huntingdon.  
Friday, July 18, Cambridge.  
Tuesday, July 22, Norwich and City.  
Saturday, July 26, Ipswich.

### MIDLAND.

*Jervis, L. C. J., and Cresswell, J.*  
Tuesday, July 8, Northampton.  
Friday, July 11, Leicester and Borough.  
Tuesday, July 15, Oakham.  
Wednesday, July 16, Lincoln and City.  
Saturday, July 19, Nottingham and Town.  
Wednesday, July 23, Derby.  
Saturday, July 26, Warwick.

### HOME.

*Pollock, L. C. B., and Erle, J.*  
Thursday, July 10, Hertford.  
Monday, July 14, Lewes.  
Monday, July 21, Maidstone.  
Monday, July 28, Chelmsford.  
Monday, August 4, Guildford.

### OXFORD.

*Alderson, B., and Wightman, J.*  
Tuesday, July 8, Abingdon.  
Thursday, July 10, Oxford.  
Saturday, July 12, Worcester and City.  
Wednesday, July 16, Stafford.  
Wednesday, July 23, Shrewsbury.  
Saturday, July 26, Hereford.  
Wednesday, July 30, Monmouth.  
Saturday, August 2, Gloucester and City.

### WESTERN.

*Platt, B., and Martin, B.*  
Wednesday, July 9, Devizes.  
Saturday, July 12, Winchester.  
Friday, July 18, Dorchester.  
Tuesday, July 22, Exeter and City.

Monday, July 29, Bodmin.  
 Friday, August 1, Wells.  
 Thursday, August 7, Bristol.

## NORTH WALES.

*Williams, J.*

Tuesday, July 15, Newtown.  
 Friday, July 18, Dolgelly.  
 Monday, July 21, Carnarvon.  
 Thursday, July 24, Beaumaris.  
 Saturday, July 26, Ruthin.  
 Wednesday, July 30, Mold.  
 Saturday, August 2, Chester and City.

## SOUTH WALES.

*Crompton, J.*

Saturday, July 5, Cardiff.  
 Wednesday, July 16, Haverfordwest & Town.  
 Saturday, July 19, Cardigan.  
 Thursday, July 24, Carmarthen.  
 Monday, July 28, Brecon.  
 Thursday, July 31, Presteign.  
 Saturday, August 2, Chester and City.

## NORTHERN.

*Willes, J., and Bramwell, B.*

Wednesday, July 9, York and City.  
 Tuesday, July 22, Durham.  
 Monday, July 28, Newcastle and Town.  
 Friday, August 1, Carlisle.  
 Tuesday, August 5, Appleby.  
 Wednesday, August 6, Lancaster.  
 Saturday, August 9, Liverpool.

## COURT OF BANKRUPTCY.

## LIST OF VACATION COMMISSIONERS.

Mr. Commissioner *Evans*, from July 1 to September 15.

Mr. Commissioner *Fonblanque*, from August 16 to October 31.

Mr. Commissioner *Fane*, from September 16 to October 31, and from November 15 to December 15.

Mr. Commissioner *Holroyd*, from July 16 to August 31, and October

Mr. Commissioner *Goulburn*, from July 1 to August 15, and September

*During Absence*

Mr. Commissioner *Evans* will take the business of Mr. Commissioner *Fane* from September 16 to October 31, and Mr. Commissioner *Fonblanque* from September 16 to October 15 and the following Saturday rotation days.—September 27, October 4 and 25, November 29, and December 23.

Mr. Commissioner *Fane* will take the business of Mr. Commissioner *Evans* from July 1 to August 31.

Mr. Commissioner *Holroyd* will take the place of Mr. Commissioner *Evans* from September 1 to 15.

Mr. Commissioner *Fonblanque* will take that of Mr. Commissioner *Goulburn*, and Mr. Com-

missioner *Holroyd* from July 16 to August 15, and Mr. Commissioner *Fane* from December 1 to 15, and the following Saturday rotation days.—July 19, August 9 and 16, November 15, and December 13.

Mr. Commissioner *Goulburn* will take the duty of Mr. Commissioner *Fonblanque* from August 16 to 31, and October 16 to 31.

Mr. Commissioner *Fane* will take that of Mr. Commissioner *Fonblanque* from September 1 to 15.

Mr. Commissioner *Evans* will sit for Mr. Commissioner *Fonblanque* from September 16 to October 15.

Mr. Commissioner *Fane* will take the business of Mr. Commissioner *Evans* from July 1 to August 31, and that of Mr. Commissioner *Fonblanque* from September 1 to 15, and the following Saturday rotation days.—July 26, August 2 and 23, September 13, and November 8.

Mr. Commissioner *Evans* will take Mr. Commissioner *Fane*'s place from September 16 to October 31.

Mr. Commissioner *Holroyd* will sit for Mr. Commissioner *Fane* from November 15 to 30.

Mr. Commissioner *Fonblanque* will take the place of Mr. Commissioner *Fane* from December 1 to 15.

Mr. Commissioner *Holroyd* will take Mr. Commissioner *Goulburn*'s place from July 1 to 15, and September 1 to 30; Mr. Commissioner *Evans* from September 1 to 15, and Mr. Commissioner *Fane* from November 15 to 30, and the following Saturday rotation days.—July 5 and 12, September 6 and 20, and November 22.

Mr. Commissioner *Fonblanque* will sit for Mr. Commissioner *Holroyd* from July 16 to August 15.

Mr. Commissioner *Goulburn* will sit for Mr. Commissioner *Holroyd* from August 16 to 31, and October 1 to 31.

Mr. Commissioner *Goulburn* will take the duties of Mr. Commissioner *Holroyd*, and Mr. Commissioner *Fonblanque* from August 16 to 31; Mr. Commissioner *Holroyd* from October 1 to 31, and Mr. Commissioner *Fonblanque* from October 16 to 31, and the following Saturday rotation days.—August 30, October 11 and 18, November 1, and December 6.

Mr. Commissioner *Holroyd* will sit for Mr. Commissioner *Goulburn* from July 1 to 15, and September 1 to 30.

Mr. Commissioner *Fonblanque* will sit for Mr. Commissioner *Goulburn* from July 16 to August 15.

Mr. Commissioner *Goulburn*'s ordinary rotation day will be on Monday instead of Saturday, commencing on Monday, July 7. No sittings to be appointed for a Commissioner during his vacation, except such as are absolutely necessary; and no sittings to be appointed for the Saturday rotation days after one o'clock in the afternoon, so that on a Saturday, if the sittings fixed for the day be over, the Court may close at 2 o'clock.

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

**House of Commons.**—June 5, 1856.

Annuities.  
Bankers Compositions.  
Fire Insurances.

**House of Lords.**

Joint-Stock Companies. Re-committed.  
Married Women's Reversionary Interest.—  
For 2nd reading.  
Charitable Uses. For 2nd reading, June 17.  
Police Counties and Boroughs. In Committee.  
Marriages in Scotland.—Lord Brougham.  
For 3rd reading.  
Clergy Offences.—Bishop of Exeter. For  
2nd reading.  
Sleeping Statutes.—For 2nd reading.  
Oath of Abjuration.—Lord Lyndhurst. For  
2nd reading, June 23.  
Judicial Statistics.—Lord Brougham. For  
2nd reading.  
Bankruptcy (Scotland).—Lord Chancellor.  
Report of Committee, June 23.

*In Select Committee.*

Drainage Act Amendment.  
Divorce and Matrimonial Causes.

*Bills Passed.*

Appellate Jurisdiction.  
Drafts on Bankers.  
Mercantile Law Amendment.  
Mercantile Law of Scotland).  
County Courts Act Amendment.

**House of Commons.**

Leases and Sales of Settled Estates. For  
2nd reading, June 23.  
Appellate Jurisdiction. For 2nd reading,  
June 23.  
Law of Partnership (No. 2).—Mr. Lowe.  
In Committee, June 24.  
Joint-Stock Companies' Winding-up Acts  
Amendment. For 2nd reading.  
County Courts Amendment. For 2nd read-  
ing, June 23.  
Mercantile Law Amendment. For 2nd read-  
ing, June 26.  
Mercantile Law (Scotland). For 2nd read-  
ing, June 26.  
Corrupt Practices Prevention.—Lord Pal-  
merston.  
Judgments, Execution, &c.—Mr. Craufurd.  
For 2nd reading, July 2.  
Amendment of Procedure and Evidence.—  
Sir F. Kelly. In Committee, June 23.  
Court of Probate of Wills and Grants of  
Administration.—Solicitor-General. For 2nd  
reading, June 23.  
Testamentary and Matrimonial Jurisdiction.  
—Sir F. Kelly. For 2nd reading, June 23.  
Ecclesiastical Courts.—Mr. Collier. For 2nd  
reading, June 23.  
Judge and Chancellors (Ecclesiastical). For  
2nd reading.

Poor Law Amendment.—Mr. Bouverie. For  
2nd reading.

Church Rates Abolition.—Sir W. Clay. In  
Committee.

Amended Formation of Parishes.—Marquis  
of Blandford. In Committee.

Advowsons.—Mr. Child. In Committee.

Tithe Commutation. In Committee.

Burial Acts Amendments.—Mr. Massey.  
For 2nd reading.

Public Health Amendment. For 2nd read-  
ing.

Medical Profession. Re-committed.

Medical Qualification and Registration.—  
Lord Elcho. For 2nd reading.

Trust Property Criminal Appropriation.—  
Attorney-General.

Qualification of Justices of the Peace.—Mr.  
Colville.

London Corporation.—Sir G. Grey. For  
2nd reading.

Courts of Common Law (Ireland). Re-Com-  
mitted.

*In Select Committee.*

Shipping Tolls, &c.  
Public Prosecutors.

*Bills Passed.*

Joint-Stock Companies.  
Sleeping Statutes.  
Oaths Abjuration.  
County and Borough Police.  
Grand Juries.

*Withdrawn.*

Simple and Special Contract Debts.

## LAW DISTRICT IMPROVEMENTS.

CENTRAL THOROUGHFARE FROM THE WEST  
END TO THE CITY.

It will be observed that the old buildings  
on the north side of Carey Street, next Chan-  
cery Lane, are now nearly pulled down. This  
forms part of the site described in the Govern-  
ment plan as the "main central thoroughfare  
from the west end of London to the City." And we understand that a deputation has been  
appointed on the part of the Legal authorities  
in the Rolls Library and other public bodies,  
to attend the Metropolitan Board of Works on  
the 27th instant, in order to induce the Board  
to fix the line of the new central street, pro-  
posed to pass through the Rolls estate to  
Fetter Lane, and thence across Farringdon  
Street to St. Pauls.

We are informed that the Law Fire Insur-  
ance Company have purchased several houses  
on the north side of Carey Street, subject to  
the street being widened, and that their new  
offices will be erected there,—an excellent po-  
sition considered with reference to the new  
street and to the Incorporated Law Society.

Two Life Insurance Offices, it appears will also soon be built in Chancery Lane.

King's College hospital, situate further on in Carey Street, will form part of the great central street, and we shall then only have to urge a decision on the proposed site of the new Courts and Offices, which are proposed to be placed between Carey Street and the Strand. If we had a Minister of Public Works like the Emperor of the French, all these projected improvements might be effected in three years. Let all parties interested in the movement bestir themselves to effect at least a commencement of these beneficial public works.

### SITTINGS IN CHANCERY.

*After Trinity Term, 1856.*

#### Lords Chancellor.

AT LINCOLN'S INN.

June 19, 26; July 3, 10, 17, 29.—1st, 2nd, 3rd, 4th, 5th, and 6th Seals.—Appeal Motions and Appeals.

June 20; July 30.—Petitions and Appeals.

June 21, 23, 24, 25, 27, 28, 30; July 1, 2, 4, 5, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 26, 28.—Appeals.

Notice.—Such days as his Lordship is hearing Appeals in the House of Lords excepted.

#### Lords Justices.

AT LINCOLN'S INN.

June 19, 26; July 3, 10, 17, 29.—1st, 2nd, 3rd, 4th, 5th, and 6th Seals.—Appeal Motions and Appeals.

June 20, 27; July 4, 11, 18, 25.—Petitions in Lunacy and Bankruptcy, and Appeal Petitions.

June 21, 23, 24, 25, 28, 30; July 1, 2, 5, 7, 8, 9, 12, 14, 15, 16, 19, 21, 22, 23, 24, 26, 28.—Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged at the Judicial Committee of the Privy Council are excepted.

#### Master of the Rolls.

AT CHANCERY LANE.

June 19, 26; July 3, 10, 17, 29.—1st, 2nd, 3rd, 4th, 5th, and 6th Seals.—Motions.

June 20, 21, 23, 24, 25, 27, 30; July 1, 2, 4, 5, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 26, 28.—Pleas, Demurrers, Exceptions, Further Directions, Further Considerations, and Further Directions and Costs, until all are disposed of, and then the General Cause Book.

June 28; July 30.—Petitions in General Paper. July 31.—Remaining motions and petitions.

Notice.—At the Sittings after Trinity Term, the Master of the Rolls will hear Exceptions, Further Directions, Further Considerations, and Further Directions and Costs, previous to proceeding to hear Original Causes.

Short Causes, Short Claims, Consent Causes, Unopposed Petitions, and Claims every Saturday at the Sitting of the Court.

Notice.—Consent Petitions must be presented and copies left with the Secretary on or before the

Thursday preceding the Saturday on which it is intended they should be heard.

#### Vice-Chancellor Kindersley.

AT LINCOLN'S INN.

June 19, 26; July 3, 10, 17, 29.—1st, 2nd, 3rd, 4th, 5th, and 6th Seals.—Motions and General Paper.

June 20, 27; July 4, 11, 18, 25.—Petitions and General Paper.

June 21, 28; July 5, 12, 19, 26.—Short Causes, Short Claims, and Causes.

June 23, 24, 25, 30; July 1, 2, 7, 8, 9, 14, 15, 16, 21, 22, 23, 24, 28.—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions.

\* \* After the Second Seal, the Vice-Chancellor will hear Exceptions and Further Directions, and Further Considerations, in priority to original Causes.

#### Vice-Chancellor Stuart.

AT LINCOLN'S INN.

June 19, 26; July 3, 10, 17, 29.—1st, 2nd, 3rd, 4th, 5th, and 6th Seals.—Motions.

June 20, 27; July 4, 11, 18.—Petitions and General Paper.

June 21, 28; July 5, 12, 19, 26.—Short Causes and Claims, and General Paper.

June 23, 24, 25, 30; July 1, 2, 7, 8, 9, 14, 15, 16, 21, 22, 23, 24, 25.—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions.

July 26.—General Petition Day.

#### Vice-Chancellor Wood.

AT LINCOLN'S INN.

June 19, 26; July 3, 10, 17, 29.—1st, 2nd, 3rd, 4th, 5th, and 6th Seals.—Motions and General Paper.

June 20, 23, 24, 25, 27, 30; July 1, 2, 4, 7, 8, 9, 11, 14, 15, 16, 18, 21, 22, 23, 24, 25, 28.—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions.

June 21, 28; July 5, 12, 19.—Petitions, Short Causes, Claims, and General Paper.

July 26.—General Petition Day.—Short Causes, Claims, and General Paper.

Notice.—Claims will be placed in the Paper after Short Cases, &c., on each Saturday in precedence of the General Paper.

N. B.—The remaining Motions and Petitions will be taken after the 6th Seal.

### COMMON LAW SITTINGS AT NISI PRIUS.

#### Exchequer of Pleas.

*After Trinity Term, 1856.*

IN MIDDLESEX.

Friday . . . June 13 Common Juries.

Saturday . . . 14 } Customs, Inland Revenue, and Common Juries.

Monday . . . 16 } Inland Revenue and Common Juries.

Tuesday . . . 17 } mon Juries.

Wednesday . . . 18 Common Juries.

Thursday . . . 19 } Special Juries and Common

Friday . . . 20 } Juries (if necessary).

Saturday . . . 21	} Special Juries and Common Juries (if necessary).
Sunday . . . 23	
Tuesday . . . 24	
Wednesday . . . 25	
Thursday . . . 26	

IN LONDON.

Friday . . . 27	} Common Juries.
Saturday . . . 28	
Monday . . . 30	
Tuesday . . . July 1	
Wednesday . . . 2	

Thursday . . . 3	} Special Juries and Common Juries (if necessary.)
Friday . . . 4	
Saturday . . . 5	
Monday . . . 7	
Tuesday . . . 8	
Wednesday . . . 9	
Thursday . . . 10	

The Court will Sit at 10 o'clock.

There will be a second Court for the trial of Causes, if necessary.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Vice-Chancellor Kindersley.

(And Mr. Justice Willes.)

Wallace v. Blackwell. May 3, June 12, 1856.

**BANKRUPT LAW CONSOLIDATION ACTS—LYING IN PRISON—ACT OF BANKRUPTCY.—SETTING ASIDE DEED.**

The defendant's son was arrested on March 20, 1849, and remained in custody of the sheriff's officer until April 24, when he was committed to prison, whence he was discharged on May 26. On the previous day he had executed a deed of assignment of certain property in favour of the defendant: Held, that a petition in bankruptcy, presented on May 20, 1850, on which an adjudication was made on June 7, did not entitle the assignees to sue to set aside the deed, as more than one year had elapsed since the expiration of 21 days after the bankrupt had first been arrested.

Held, that the year cannot be computed from the last 21 days of lying in prison.

THIS was a bill by the assignees of a bankrupt, the defendant's son, to set aside a deed of assignment of certain property, dated 25th May, 1849. It appeared that the bankrupt had been arrested on March 20, 1849, and remained in custody of the sheriff's officer until April 24, when he was committed to prison, whence he was discharged on May 26. A petition in bankruptcy was presented on May 20, 1850, and on June 4 four days' further time was given to the petitioner, and the adjudication took place on June 7.

By the 12 & 13 Vict. c. 106, s. 69, it is enacted, that "if any such trader, having been arrested or committed to prison for debt, or on any attachment for nonpayment of money, shall upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for 21 days,—or, having been arrested or committed to prison for any other cause, shall lie in prison for 21 days after any detainer for debt lodged against him, and not discharged;—every such trader shall thereby be deemed to have committed an act of bankruptcy;" and by s. 88, that "no person shall be liable to become bankrupt by reason of any act of bankruptcy committed more than twelve months prior to the issuing of any fiat in bankruptcy or the filing of any petition for adjudication of bankruptcy against him, and that no adjudication

of bankruptcy shall be deemed invalid by reason of any act of bankruptcy prior to the debt of the petitioning creditor, provided there be a sufficient act of bankruptcy subsequent to such debt."

Baily, Jessel, and Holl for the plaintiffs; Glasse, J. P. Wilde, and Bates for the defendant. *Cur. ad. vult.*

The Vice-Chancellor said, he concurred in the written opinion of Mr. Justice Willes, who had rendered his assistance when the case was argued, that no act of bankruptcy was shown to have taken place prior to the adjudication, and that consequently by the operation of the 12 & 13 Vict. c. 106, s. 88, the plaintiffs' title was bad. The question turned on s. 69 of the Act, which pointed to one act and not to repeated acts of bankruptcy by a lying in prison for 21 days, and there was no reason for straining the language so as to create a fresh act of bankruptcy on each and every successive 21 days, whereby according to the Statute an act of bankruptcy was committed. This species of act of bankruptcy was created by the 1 Jac. 1, c. 15, s. 2, the time being six months, and to the end of which period the title of the assignees related back. Under that Statute the party must be a trader when arrested (see also *Esparie Lynch*, Mont. 453), and it was not intended to revive debts incurred during the imprisonment, but it was sufficient that debts existed at the time of the arrest and that the act of bankruptcy was committed. 'This time was reduced by the 21 Jac. 1, c. 19, s. 2, to two months, which were again reduced by the 6 Geo. 4, c. 16, s. 5, to 21 days, and the relation of the act of bankruptcy to the time of the arrest was abolished. The period of 12 months was introduced by the 5 & 6 Vict. c. 123, s. 7, and was amply sufficient to afford the creditors time to proceed. The assignees had therefore no right to proceed, and the bill would be accordingly dismissed, but without costs.

### Court of Queen's Bench.

Regina v. Hansell. June 11, 1856.

**MANDAMUS ON ECCLESIASTICAL OFFICER.—REFUSAL.—COSTS.**

Held, that in order to enable a mandamus to issue on an ecclesiastical officer to deliver up certain wills and documents to which another officer was entitled upon a separa-



*tion of two offices formerly held by the same person, a distinct refusal must be shown. It is insufficient where the officer only asked for time in order to separate the several wills, &c., to which the other officer was entitled. A rule nisi under such circumstances was discharged, with costs.*

THIS was a rule nisi for a mandamus on the deputy registrar of the Archdeaconry Court of Warwick, to deliver up to Mr. Charles John West, the registrar of the Commissary Court of the Bishop of Norwich, all the wills and other documents belonging to that Court. It appeared that in the Archdeaconry of Norwich there were two Courts, the one of the Archdeacon and the other of the Bishop's Commissary, which exercised similar jurisdiction, and had heretofore been held by the same person. The office was now divided, and the Commissary claimed to have the wills, &c., in his department. All the documents were kept in the same building, but the original wills were easily distinguishable, but the copy of both classes of wills were entered in the same book, which was bound up at the end of each year.

*H. Hill and Blackburn* showed cause against the rule, which was supported by *Palmer*.

The Court said, that Mr. Hansell had not claimed the documents belonging to the Commissary, but had only asked for time to separate them, and had offered to devote a portion of each day to the task. There had therefore been no refusal, and the rule would therefore be discharged with costs.

*O'Kines v. Onslow.* June 12, 1856.

#### SEQUESTRATION.—EXECUTION BY SUCCESSOR.

*A sequestration issued in respect of a living belonging to the see of Canterbury and directed to the archbishop. The living was afterwards transferred to the Bishop of London: Held, that he should execute the writ without a new one being issued, as he was quoad the successor of the archbishop.*

THIS was a rule nisi on the Bishop of London to return and pay over to the plaintiff in this action, the amount levied under a writ of sequestration upon a judgment against the defendant, who was the incumbent of Newington, Surrey. It appeared that this parish formerly formed part of the see of the Archbishop of Canterbury, to whom the sequestration was directed, but had been lately transferred to the diocese of the Bishop of London, together with the sequestration in question.

*H. Hill and Badeley* showed cause against the rule.

The Court (without calling on *W. H. Cooke* in support) said, that quoad the parish of Newington the bishop was successor of the archbishop, and as successor he was bound to execute writs of sequestration although directed to his predecessor. The rule would therefore be made absolute.

#### Court of Common Pleas.

*Swinfen v. Swinfen.* June 11, 1856.

#### COMPROMISE OF SIGNED ISSUE.—AUTHORITY OF COUNSEL.—CONTEMPT.—PRACTICE.

*Held, that the authority of counsel to agree to a compromise on the trial cannot be questioned afterwards.*

*On a feigned issue from Chancery the matter was compromised by order of Nisi Prius which was afterwards made a rule of Court: Held, that an application for disobedience thereto should be made at law and not in equity.*

*The plaintiff refused to fulfil the agreement under the order of Nisi Prius: Held, that such refusal was not a continuing one, and that in order to bring her into contempt, the rule nisi should be served personally on her, and a demand of performance be made.*

THIS was a rule nisi for an attachment against the plaintiff for non-obedience to a rule of Court. It appeared that this was a feigned issue by order of the Court of Chancery, and that on the trial a compromise was entered into between the counsel for the several parties, and the order of Nisi Prius embodying the same was made a rule of Court. The plaintiff refused to be bound by the order of Nisi Prius, on the ground she had never authorised it, whereupon this rule had been obtained.

*Watson and Cole* showed cause, citing *Doe d. Earl of Cardigan v. Bywater*, 7 C. B. 794; *Doddington v. Hudson*, 1 Bingh. 257.

*Attorney-General and Whateley* in support, referred to *Furnival v. Bogle*, 4 Russ. 142; *Is re Hobler*, 8 Beav. 101.

The Court said, that the objection that the application should have been made to a Court of Equity, as the issue was for the purpose of assisting that Court in disposing of a suit there, was unfounded, as the issue was a proceeding in this Court, and the agreement had been made a rule of this Court, which was therefore the proper tribunal to punish a contempt. Then on the objection that the arrangement was made by counsel without authority, the Court could not listen to such an objection. It would be fatal to the administration of justice if the authority of counsel were allowed to be questioned, as if he did what a client repudiated, the course was for the client to withdraw his brief. Then as to there having been no contempt. Although in the communications with the attorney, there had been shown great disinclination to perform the agreement, yet this was before the order at Nisi Prius was made a rule of Court. There was therefore no refusal to obey a rule of Court, and the refusal in question could not be construed into a continuing one. As this was in the nature of a criminal proceeding, the rule of practice must be strictly adhered to, and the plaintiff be served with a copy rule personally and a performance be demanded. The rule must be discharged, but without costs, and without prejudice to any further application.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, JUNE 28, 1856.

### REMAINING LAW BILLS IN PARLIAMENT.

It is rumoured, that endeavours will be made to close the business of the Session of Parliament earlier this year than the last. The prerogation took place in 1835, on the 14th August. We are now nearly at the end of June, and there remains therefore but little more than a month to go through the labour of considering, amending, altering, and revising the numerous bills which are still, after the lapse of five months, before one or other of the Houses of Parliament. There must, as usual, be a large number negatived or withdrawn, or appointed to be read three or six months hence.

We propose, therefore, again to devote a small space in order to bring to the notice of the profession the principal bills wherein they are more or less interested, either for themselves or their clients.

For a large class of the proprietors of estates, and those interested under wills and settlements, together with their respective solicitors, the Settled Estates Bill, holds a prominent position. There is ample time to pass this measure through its remaining stages in the House of Commons, and unless that branch of the Legislature should make any material alterations, the bill will go back to the House of Lords, and may receive the royal assent before the close of the session.

Next to this measure, we look upon the Joint Stock Companies Bill, including the principle of limited liability, and the Law of Partnership amendment Bill, as highly important both to the commercial classes and to the attorneys and solicitors whose legal services they will require, and which assistance must, indeed, be indispensable in carrying the provisions of the new law safely into effect.

The Ecclesiastical Courts Bill is also of great professional importance. We observe that Lord Lyndhurst has brought up the report of the Select Committee on the Divorce and Matrimonial Causes Bill, and that this measure, which is essential to the completion of the reforms relating to the Ecclesiastical Courts, will shortly be considered in a Committee of the whole House. If the subject of divorce and matrimonial grievance can be satisfactorily arranged, it will go far towards assisting the other

more general bill for establishing a Court of Probate and Administration. Yet it must not be forgotten that there still remains to be provided some sufficient enactments relating to church or rather clergy discipline. The Lord Chancellor's bill on that subject was negatived, and we observe that the Bishop of Exeter's "Clergy Offences" Bill has made no progress since the first reading. The Solicitor-General's Ecclesiastical Courts' Bill, after much discussion, was read a second time last Thursday evening, and will be considered in Committee next Thursday. The Solicitor-General has agreed to incorporate in his Bill some of Sir Fitzroy Kelly's clauses, and probably therefore the Government will be supported by the Conservative party, and thus the Bill may pass. It will however require several amendments to be made in Committee.

The next important alteration of the law which will materially affect both client and attorney, is that proposed to be effected by the Mercantile Law Amendment Bill, especially as it relates to the partial repeal of the statute of frauds in regard to contracts in writing. Important evidence was given before the Select Committee, but three out of five of the members of that committee voted in favour of the repeal clause; and we understand the question will be strenuously mooted in the House of Commons. It is not improbable that this difference of opinion will occasion a postponement of the bill.

The County Courts' Further Amendment Bill may be ranked next in order; and as it has been steered successfully through the Upper House, and to a certain extent is founded on the report of the Commissioners, it may also pass the other House. But the interesting clauses which relate to the salaries of the Judges are yet to be discussed before that tribunal to which they properly belong. We observe that notice of motion has been recently given to increase the salaries of all the County Court Judges to one uniform amount of £1,500.

Another proposition of great importance is the Lords Appellate Jurisdiction Bill which has been sent down to the House of Commons,—where a discussion is expected to arise on the amount of the salaries of new Law Lords, who will officiate as Deputy Speakers of the House, being Peers for life, and sitting on appeals with the Lord Chancellor.

We think that the arrangement proposed is, on the whole, the best that can be practically carried into effect.

The remaining bills may be briefly enumerated as follows:—

In the House of Lords are the bills relating to the Reversionary Interests of Married Women in Personal Property; Charitable Uses; Drainage; Counties and Boroughs Police; with some miscellaneous measures, not bearing on matters of professional concern.

In the House of Commons the bills, lingering in their progress, relate to Procedure and Evidence; Judgments and Execution; Public Prosecutors; Advertisements; Tithe Commutation; the Poor Laws; Church Rates; and other bills relating to Ireland, and to subjects which do not materially concern the practical lawyer.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### DRAFTS ON BANKERS. 19 & 20 Vict. c. 25.

The following are the Title, Preamble, and Sections of this Act:—

An Act to amend the Law relating to Drafts on Bankers. [June 28, 1856.]

Whereas doubts have arisen as to the obligations of bankers with respect to cross-written drafts: And whereas it would conduce to the ease of commerce, the security of property, and the prevention of crime, if drawers or holders of drafts on bankers payable to bearer or to order on demand were enabled effectually to direct the payment of the same to be made only to or through some banker: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. In every case where a draft on any banker made payable to bearer or to order on demand bears across its face an addition, in written or stamped letters, of the name of any banker, or of the words "and company," in full or abbreviated, either of such additions shall have the force of a direction to the bankers upon whom such draft is made that the same is to be paid only to or through some banker, and the same shall be payable only to or through some banker.

2. In the construction of this Act the word "banker" shall include any person or persons, or corporation, or joint-stock or other company, acting as a banker or bankers.

## ADMINISTRATION OF INTESTATES' ESTATES BILL.

THIS bill, which is prepared and brought in by Mr. Locke King and Mr. Headlam, purposes to enact that the special customs concerning the distribution of the personal estate of intestates observed in the city of London, the province of York, and certain other places, shall, with respect to all persons dying on or after 1st January, 1857, wholly cease and determine;

and the distribution of the personal estate of all persons so dying shall take place as if such customs had never existed, and as if the rules for the distribution of the personal estate of intestates generally prevalent in the province of Canterbury had prevailed throughout England and Wales, any law or statute to the contrary notwithstanding.

## NOTICES OF NEW BOOKS.

*A Book of Costs in the Courts of Queen's Bench, Common Pleas, and Exchequer, the Crown and Queen's Remembrancer's Offices, in Bankruptcy, and the Court for Relief of Insolvent Debtors, Concerning, and Miscellaneous Matters; in Conformity with the General Scale of Charges allowed in Taxation, and with the Common Law Procedure Acts, 1852 and 1854, and Bills of Exchange Act, 1855.* By RICHARD G. DAX, Esq., of the Middle Temple, Barrister-at-Law. London: William Maxwell, 82, Bell-yard, Lincoln's Inn, Law Bookseller and Publisher: Bell & Bradfute, Edinburgh; Hodges & Smith, Dublin. 1856. pp. 589.

MR. DAX, the author of this useful work, has possessed considerable advantages in preparing his extensive collection of Bills of Costs, particularly in the Common Law Courts, from the access he had to the valuable precedents of the late Master Dax, and the advice and assistance received from him. The preface well explains these advantages.

"In offering this new Book of Costs to the Profession, I beg to state, as briefly as possible, the grounds on which I have relied as qualifications for the task; and I am at the same time anxious to pay a tribute of respect to my late father, my predecessor in the same field of labour, whose knowledge and ability in all matters of taxation, throughout the period of twenty-three years, during which he held the appointment of Senior Master of the Court of Exchequer, are, I believe, universally admitted.

"In the last year of his life, it had been his intention to publish a work of this nature, which should embrace every variety of charge arising as well in the old practice, as under the Common Law Procedure Act of 1852, and for this purpose he had deputed me to extract from those daily bills that came before him in his official capacity, such portions as bore relation to the altered scale, after they had passed through the ordeal of taxation; and since his death I have collated from various taxed bills of costs, under the subsequent Act of 1854, those forms which are given in the present book.

"Having thus obtained such a reliable and valuable mass of precedent, and, under my father's able instruction, a practical and theoretical knowledge of those principles of taxation on which his decisions were based, in every branch of legal costs; I have undertaken this work, in the hope of rendering an assistance to the Profession, of which they must continually be in need, and which I feel justified in stating, from the care I have bestowed on it, may be relied upon as a safe guide on every matter comprised in its contents. My aim has been, that it shall be found useful in drawing a correct bill of costs for the purposes of taxation, preventing on the one hand the risk of unauthorised charges being inserted, and on the other, guarding against the loss

that would arise from an omission of those to which the practitioner is entitled."

The First Part of the Work comprises the directions of the Judges to the taxing officers, the authorised allowances for the usual costs of plaintiffs, and defendants, and their witnesses, with the official fees payable in the different departments of the Courts. The Second Part comprises the costs on the reduced or lower scale, in actions under £20. The Third Part relates to the costs, both of Plaintiffs and defendants, on the higher scale of allowance. The Fourth Part applies to ordinary proceedings. The Fifth Part relates to costs on posetas, new trials, &c. The Sixth contains miscellaneous bills. The Seventh is devoted to costs in the crown office. The Eighth to the Insolvent Debtors' Court and Bankruptcy. To which is added bills in Conveyance business.

The appendix contains various forms of affidavits in support of bills and costs, and gives the following very useful directions in framing affidavits of increase.

"In making affidavits of increase there are several facts that are required to be clearly, distinctly, and positively sworn to, without which the charges will not be allowed. The affidavits must be made by the attorney or some clerk having the management or conduct of the cause, or by the client, for any payments that may have been made by him to counsel, or to witnesses or otherwise, during the progress of the action. The place of abode and quality or occupation of the witnesses, the places and distances at which they are subpoenaed, and the distances they have to travel for the purpose of attending the trial, must be distinctly stated, and also that they are material and necessary witnesses for the party on the trial of the cause; and it must be stated positively that they did attend at the trial, and also that they attended as witnesses in no other cause.\* The number of days they are necessarily absent from home on the trial must also be accurately sworn to. If an attorney should attend as a witness it must be stated whether or not he attended at the place of trial as attorney or witness in any other cause, or whether he had or had not, any other business there. It is also proper to state on what day the cause was tried. It is customary and proper to introduce a scale into the affidavit showing the names, places of abode, and quality or occupation in life of the witnesses, the distance they reside from the attorney in the cause, the distance they have to travel to the assizes, and the number of days they are necessarily absent, and the sums of money paid to each for attendance."

A tabular form is then given of the names of the witnesses, their occupation, residence, time absent, &c. It is then observed that—

"In paying the witnesses it should clearly appear how much is paid to each witness; and if they have been paid partly in money, and partly for their tavern bill, it should clearly appear how much of the tavern expenses is applicable to each person. But the better way is always to pay them in money according to the scale of allowance to witnesses;

this saves much time and trouble on the taxation of costs, and prevents a loss to attorneys, which frequently occurs, from not being able to separate the charge for tavern bill so as to show how much may be applicable to each witness. It is not sufficient to divide the same rateably amongst them, as it might lead to the injustice of paying too little to one witness, and making up an average by payment of too much to another and which can never be allowed.

"Whenever any circumstances occur during the progress of the action by which expense is increased or incurred, it must be made distinctly to appear, by the affidavit, that such expense has not been occasioned by the default of the party claiming the costs, but that the same was necessary, under the circumstances, for the purposes of the suit.

"It is impossible to frame an affidavit to meet every emergency that may arise, but those introduced into the Appendix will show the usual form upon a common occasion, as also in some special instances of cross issues; that is to say, when some issues are found for the plaintiff and other issues for the defendant in the same action.

"It is sometimes necessary, in cases of importance and difficulty, for an attorney in the cause, residing in the country and employing an agent in London, to attend a trial of a cause in London; but to warrant the allowance of such attendance by the Master it must clearly appear, by the affidavit of increase, that such attendance was absolutely necessary, and that the trial could not safely be intrusted to an agent. A copy of an affidavit which was used for such purpose will also be found in the Appendix.

"In case maps or plans are required in any case, the necessity thereof should also appear in the affidavit."

## APATHY OF THE PROFESSION.

We have lately had occasion in reference to a measure that would probably be highly beneficial, to consider the means of arousing the members of the larger branch of the legal profession to a sense of their interests, and the course to be adopted for improving their status and protecting them from the invasion of their rights and privileges. Perhaps the indifference which prevails regarding their own immediate concerns, may be partly accounted for by the absorbing nature of their avocations in behalf of their respective clients. It is probable, also, that a very large proportion of the practitioners, rely that the various law societies, both metropolitan and provincial, sufficiently bestow their attention on all useful occasions; and therefore, the non-members indolently consider that their aid and assistance are not required.

It may also be, that a considerable number are content with things as they are "unaltered and unimproved;" whilst others, notwithstanding existing defects, are in a prosperous state, and have no expectation that the changes which the law reformers propose will confer any benefit on them. Then, lastly, is realised the old saying that "what is everybody's is nobody's business."

Some of the fraternity connected with this work, are old enough to recollect that, in the early part of

\* Or, otherwise, as the case may be.

We think that the arranger whole, the best that can be effected.

The remaining bills it follows:—

In the House of Lords Reversionary Interest; Personal Property; Churches and Boroughs measures, not be concern.

In the House their progress, Judgments and Advertisements; Church Rates and to subject practical la

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After all that the most sanguine can propose, the attorneys, however united in their several associations, have not the means or power of combined action to any extent resembling that of the bar. Recollect their social meetings in the Halls of their Inns of Court and at the Bar Meas on their several Circuits, with upwards of a hundred benchers to protect their interests, with the natural leaning of the bench in their favour,—their numerous representatives in Parliament; and last not least, their influence with the press, the editors of which as their leading writers are mostly members of the bar.

Great efforts have been made, year after year for nearly ten years by the "Metropolitan and Provincial Law Associations," to induce the attorneys both in town and country to associate in one general body, but hitherto without effect. It appears, indeed, that the association is rather less in number than it was after the first year's exertions. That association not content with their annual reports and the circulars which they frequently issue, have from time to time authorised their able and zealous secretary to make a circuit in the Long Vacation, through a large part of England for the purpose of diffusing a knowledge of the just interests of the profession, and the necessity of joining the association in order to support and

*Apology of the Profession.*

We extract the secretary's graphic statement of the general apathy, the indifference, and the total want of professional union which was manifested throughout his tour of observation. He says—

"The profession, I presume it is admitted, could organise itself if it chose; the simple fact, then, is, that the profession has yet to be convinced that it needs organization."

"Probably, this is not true of those who are attending this meeting; or why are they here? Possibly, they may even doubt whether it is true of the bulk of their professional brethren. Let me mention one or two facts out of my personal experience upon the subject."

"It has been part of my duty for several years, in the course of each long vacation, to go into the country for the purpose of discussing this subject at meetings of the profession summoned for the purpose."

"When I was first preparing for these journeys, I used to write to our local subscribers, and say, in effect, 'If you will get up a meeting of the profession in your locality; and invite me to attend, I will come down, and we will try and get some new members.'"

"But I very soon found that if I limited myself to such a communication as that, I should never leave London; for the almost universal reply was, 'The members of the profession here are so apathetic that they do not care to get up a meeting, and will not invite you.' So then I changed my mode of address, and said, 'Dear Sir, I am coming to your town on such a day; will you be so kind as to oblige the committee by calling a meeting of the profession to meet me?' That I have found to succeed much better; but even so, when I have planned to visit a dozen towns, I think myself fortunate if meetings are called in two-thirds of that number. When no meeting is called, I still go to the town, and personally wait upon all the leading members of the profession; and when I have succeeded in explaining that I am not an itinerant canvasser for a Life Insurance Company—which it is very frequently taken for granted I am—I usually receive a ready promise that the papers I leave shall be carefully read; frequently, however, accompanied by the intimation that, for some reason or another, it is not probable that I shall be afterwards requested to add to my list of members. Sometimes the gentleman I call on is old, and thinking of retiring from the profession; sometimes he is young, and cannot yet afford a subscription. Sometimes societies are of no use whatever—all humbug; sometimes they are of great use, certainly, and all ought to join, and as soon as everybody else has done so, he will too. Sometimes a consultation is necessary with 'my senior partner, Mr. Jorkins.' The most common answer of all, however, is undoubtedly some expression of the following idea: 'You ask me to pay you a guinea; show me that at the end of the year I shall not be a guinea the poorer, and I will do so.' Sometimes, however, I find gentlemen who, though they have not taken the trouble to find out the society, yet join it as soon as it is thus brought, as it were, into their offices."

"When, however, a meeting is called, there are still several dangers to get over. Sometimes no one attends; sometimes those who attend listen to what I say, and reply, that they will think over the mat-

the "Metropolitan and Provincial Law Associations," to induce the attorneys both in town and country to associate in one general body, but hitherto without effect. It appears, indeed, that the association is rather less in number than it was after the first year's exertions. That association not content with their annual reports and the circulars which they frequently issue, have from time to time authorised their able and zealous secretary to make a circuit in the Long Vacation, through a large part of England for the purpose of diffusing a knowledge of the just interests of the profession, and the necessity of joining the association in order to support and

We have no doubt that a large proportion of the members of the Incorporated Law Society have joined it, not for the purpose of advancing their professional interests, as attorneys and solicitors, or for the purpose of agitation of measures for the improvement of their status, but because the known respectability of the society reflects some credit on its members, and because its extensive library of reports and proceedings, its various courses of lectures, and its other advantages as a place of daily resort for the members, and of study for their articulated clients, render it almost indispensable to every practitioner resident in the metropolis.

After all that the most sanguine can propose, the attorneys, however united in their several associations, have not the means or power of combined action to any extent resembling that of the bar. Recollect their social meetings in the Halls of their Inns of Court and at the Bar Meas on their several Circuits, with upwards of a hundred benchers to protect their interests, with the natural leaning of the bench in their favour,—their numerous representatives in Parliament; and last not least, their influence with the press, the editors of which as their leading writers are mostly members of the bar.

Great efforts have been made, year after year for nearly ten years by the "Metropolitan and Provincial Law Associations," to induce the attorneys both in town and country to associate in one general body, but hitherto without effect. It appears, indeed, that the association is rather less in number than it was after the first year's exertions. That association not content with their annual reports and the circulars which they frequently issue, have from time to time authorised their able and zealous secretary to make a circuit in the Long Vacation, through a large part of England for the purpose of diffusing a knowledge of the just interests of the profession, and the necessity of joining the association in order to support and

ter; sometimes a few, and sometimes a good many, at once become members; and when one does, others generally do so also. But sometimes the meeting is of opinion that the subject is much too important to be lightly passed over—that they must have, not only a regular connexion with the London committee, but, in addition, a local committee, or a local society. When that is the case, I know no good will come of the meeting. My experience is, that all that is done at all is done at the meeting, or while I am in the town. After I have left, it is the old tale:—What is everybody's business is nobody's business. The local society is *not formed*, and the committee *does not meet*.

"But again, the difficulty is not only to gain members, but to keep them; and the same causes that make it difficult to induce them to subscribe, make it easy for them to drop their subscription, if a personal interest in the association is not in some way kept up.

"It being, then, clear that the majority of practising attorneys and solicitors do not consider it a necessary thing to join any society, the question arises, are they right? Are there sound reasons why every man in the ranks of the profession should also inscribe his name as a member of some society? Are there any objects to obtain or to support which attorneys and solicitors may legitimately band themselves together, without any injury, or, perhaps, with positive benefit to the public?

"The time has gone by when any class of Englishmen could band themselves openly together for the purpose of opposing the public good. They may have objects in view that are really injurious, but they must not declare them, on pain of certain defeat. The public is too powerful, and too watchful, to be beaten in open warfare. If, therefore, a professional society openly declares its principles, its objects, and its mode of operation, we may rest assured that no amount of success it can obtain will be permanently injurious to the public; and this is more and more sure to be the case in proportion as its proceedings are kept before the public, and its influence is extended through the ranks of its members. On the other hand, the time has certainly *not* passed, perhaps we may think that it never will be, when even men of cultivated intelligence may privately pursue a course of conduct at once highly successful in advancing their worldly interests, and highly injurious both to all those immediately affected by it, and to the character of any class or profession to which they may belong. Applying these general facts to the legal profession, we may say, that they may, with great advantage both to themselves and the public, combine together to secure two classes of objects;—the first of which may be called *defensive*, and the second *progressive*.

"They should defend themselves from dangers arising from within their own body, and from attacks directed against it from without; they should inflict both professional and social punishment upon any member of the profession proved guilty of malpractice; and they should continue to resist and repel all injurious attacks upon the profession from without; or the attempts to encroach upon the legitimate province of the profession by any of the various tribes of semi-professional tradesmen who hang upon the edges of the profession like parasitical zoophytes.

"Nor should they be contented with upholding and maintaining the actual rights and character of the profession; they should bring their common experience to bear upon the noble object of raising the

entire status of the body to which they belong; improving and rendering uniform throughout the country professional usage; giving a courteous and liberal tone to professional intercourse; and both as a means to these ends, and for its own sake, raising the standard of professional education."

## PROPOSED DECIMAL COINAGE.

A PAMPHLET has been written by Mr. John Clayton, an able solicitor,\* containing observations on the proposed decimal coinage; and as the subject is clearly and practically explained, we deem it proper to submit to our readers so much of the publication as will enable them to form an opinion of the modus operandi of the project. Mr. Clayton thinks that the return of peace will soon draw the public attention to matters of a domestic character, and amongst the rest to this important proposal of "decimal coinage." By way of illustrating the improvement which would be effected in our arithmetical calculations, the following case is stated:—

"Suppose it to be desired, then, to ascertain the value of 456 quarters of wheat, at £3 15s. 6d. per quarter, we may make the calculation by 'compound multiplication, thus:—

$$\begin{array}{r}
 8 \ 15 \ 6 \times 6 \\
 \hline
 10 \\
 87 \ 15 \ 0 \times 5 \\
 \hline
 10 \\
 877 \ 10 \ 0 \\
 \hline
 4 \\
 1510 \ 0 \ 0 \\
 188 \ 15 \ 0 \\
 22 \ 18 \ 0 \\
 \hline
 \underline{\underline{£1721 \ 8 \ 0}}
 \end{array}$$

Or we may reduce the £3 15s. 6d. into pence, and then multiply by 456, thus:—

$$\begin{array}{r}
 8 \ 15 \ 6 \\
 20 \\
 \hline
 75 \\
 12 \\
 \hline
 906 \\
 456 \\
 \hline
 5436 \\
 4530 \\
 8624 \\
 \hline
 12)418186 \\
 \hline
 2,0)8442,8 \\
 \hline
 \underline{\underline{£1721,8}}
 \end{array}$$

\* Published by Richardson, Cornhill.

Or we may ascertain the decimal representing 15s. 6d., and proceed thus:—

8.775
456
—
22650
18875
15100
—
1721.400
20
—
8,0

"The first calculation involves forty-five figures, the second forty-eight, and the last has but thirty-three, and in that point of view alone, therefore, the last has the preference. But it may be asked, What is meant by the figures .775, and how are they produced? The answer is, that fifteen shillings and sixpence has been found to be 775 thousandth parts of a pound, and is represented, when annexed to pounds in vulgar fractions, thus;  $\frac{775}{1000}$ , and in decimals £8.775.

"If we kept our accounts in pounds and farthings, instead of pounds, shillings, pence, and farthings, and our pound were divided into 1000 parts or farthings, instead of 960 as at present, £8.775 would be at once within the comprehension of every one. It would represent three pounds and 775 farthings, and we should find at the end of the third sum that the answer to our question was £1721 and 400 farthings, and so be saved the trouble of multiplying by twenty to ascertain the value in shillings of the decimal .400.

"So that besides saving all the trouble and chance of mistake attending the turning pence into shillings and shillings into pounds, which is involved in the first two sums, there would be an actual saving in figures over the first sum of sixteen, and over the second of nineteen. We should have nothing to do but to multiply the sum by the number of quarters and there is the answer at once—£1721 and 400 farthings."

The writer then proceeds to describe the practice of other countries.

"The French divide their franc into 100 parts, or centimes. The Americans do the same; they keep their accounts in dollars and cents. It is not of the least consequence, so far as the matter of calculation is concerned, whether the pound, the franc, or the dollar, or whatever may be the unit, is divided into ten, one hundred, or one thousand parts, so that it be divided into such a number of decimal parts, as that one of them shall be equal to the lowest coin in use, or nearly so. There are 960 farthings in a pound; now, if we divided this number by ten our lowest coin would consist of 96 farthings, or a florin, which would be too large, and if we divided by one hundred there would still be the same inconvenience; so that, is we wish to adopt the decimal system and keep our present pound as the unit, we must divide it into one thousand parts. On the other hand, if we wish to preserve the farthing, we must abolish the sovereign, and keep our accounts in a new gold coin of the value of £1 0s. 10d., which equals 1000 farthings.

"Some present inconvenience would attend whatever plan of change we may adopt; of the two above suggested the retention of the sovereign seems to be

the favourite with those who have given their attention to the subject, but it does not appear to me to have been placed before the public in a very practicable form."

In order to effect the proposed change the first operation would be to have all the coins marked with the several number of *mils* each would contain, thus:—

" One Sovereign . . . . .	to be marked 1000
" Half-Sovereign . . . . .	500
" Five-Shilling Piece . . . . .	250
" Half-Crown . . . . .	125
" Florin . . . . .	100
" Shilling . . . . .	50
" Sixpence . . . . .	25
" Fourpenny Piece . . . . .	16
" Threepenny Piece . . . . .	12
" Large Penny . . . . .	5
" Small Penny . . . . .	4
" Halfpenny . . . . .	2
" Farthing . . . . .	1

"The public would thus be taught practically the value in *mils* of our present coinage, which would be much more effectual as a means of initiating them in the new system than lecturing and so on. This once accomplished, a day might be appointed for the change, and it seems to me that it would be carried out without much difficulty. The proposed figures would enable every one to see that justice was done him, and would save him from any difficulty in turning shillings, pence, and farthings into *mils*. No new coins would in the first instance be necessary, excepting a good supply of large penny pieces, marked 5; there would be no double columns in the cash-book, and no confusion about florins, cents, and mils.

"It would be necessary, by legislative enactment, to provide for cases of Dr. and Cr., and of contract for prices not reducible into the new coin, and for our penny taxation. As between Dr. and Cr., and cases of contract, I venture to suggest as the fair thing that the account should be worked out in our present coin, and the sum total turned into pounds and *mils*; the amount in *mils*, where the pence did not exceed threepence, being the number approximating to, and just under the amount in pence. As for instance, the balance owing between Dr. and Cr., on the day on which the Act comes into operation, being two-pence, it should be treated as 8 *mils*, and not as 9; and where the amount in pence was above threepence and under sixpence, the *mils* should be the number approximating to and just above it. As, for example, for fourpence, the number of *mils* should be 17, and not 16.

"But some are of opinion, that whatever rules are laid down, the poor will suffer by the change, that tradesmen will be sure in giving change and in fixing prices, to take all the turns in their own favour. It is my belief that competition will set all these matters right. It must frequently happen as it is that in the subdivision of wholesale quantities or prices the retail tradesman has to deal with the fraction of a farthing, and if he waives it, contenting himself with the next lower farthing, it is probably because he knows that if he charged the next higher he would be undersold by some neighbouring shopkeeper."

We must refer to the pamphlet for further details and observations.

## HOUSE OF LORDS AS A COURT OF APPEAL.

(From the *Dumfries Courier*.)

WE have taken occasion frequently of late to call public attention to the attempts being made to overturn the existing system of appellate jurisdiction in the House of Lords, and to introduce innovations which would seriously injure that august tribunal. The movement originated some years ago in the Parliament House of Edinburgh, and has been chiefly promoted by agents and counsel practising before the Court of Session. It may not be agreeable to the practitioners before that court to find the decisions of the Scotch judges so frequently reversed on appeal, and the administrators of the law so often reminded that they have much of their own law still to learn. But instead of bringing the law of Scotland into harmony with the more liberal and comprehensive principles of jurisprudence which prevail in the Supreme Court, these legal functionaries would desire to infuse into the House of Lords more of the influence of the Court of Session. In this way the value of an appeal would be almost entirely lost; for if Scotch law is alone to rule the decisions of the Appellate Court, the form and expense of an appeal may as well be dispensed with. The plan proposed is to call up to the House of Lords one of the Scotch judges; and as it may reasonably be assumed that the best would be taken, Scotland, instead of being a gainer, would be a serious loser by the change. From the way in which the bench in Scotland is recruited—and the remark applies to both parties alike—the prevailing belief is that the surest road to promotion is through political partisanship. An Edinburgh lawyer who does not link himself to the dominant political faction—whatever his professional merits—has but little chance of ever reaching the bench, or even of obtaining the humbler reward of a sheriffship. With the solitary exception of Sir Robert Peel, who, to his honour be it said, looked only to professional merit, both of the leading political parties are equally chargeable with confiding their patronage to their own political satellites. Hence the greater danger of introducing a system which would involve the constant presence of a Scotch judge in the court of ultimate resort.

The great objection to the elevation of a Scotch judge is the probability, or rather the certainty, that on him would devolve the disposal of all Scotch appeals; for it is not to be supposed that after a judge had been provided for the special purpose of supplying Scotch law, the other law lords would trouble themselves much about cases from Scotland, or apply their minds with that profound earnestness to the elucidation of the principles involved, which they now display. In this way, the chief object of bringing the causes under the influence of fresh and powerful minds would be frustrated; and for all practical purposes the Scotch judge might as well remain in Edinburgh, and dispose of the cases there.

We gladly hail as a participator in these views our able contemporary the *Advertiser*; and make no apology for transferring to our columns the following portion of an article on this subject, which appeared in its impression of yesterday, and which conclusively shews the practical benefits of the present system of appeal. In reference to the recent case of *Sprot v. the Caledonian Railway Company*, reversed on appeal, it is said:—

"Here was a case in which the first division of

the Court of Session unanimously declared, overturning the decision of the Lord Ordinary, that a party to a lawful agreement fairly and deliberately entered into, and as plain in its terms as any language could make it, was not bound by the terms of that agreement. Such, without the verbiage and circumlocution and metaphysical argument in which their judgments were couched, was the law laid down by all the learned judges of our much-lauded First Division. If that were Scotch law, it was not common sense; but the Lord Chancellor has now declared, that the law and common sense are not in this case discordant. It is well, then, that the House of Lords is to be retained as a Court of Appeal, since it does protect Scotch litigants against the over-refining and microscopic metaphysics of the Edinburgh paper lords, and administers the law much more with reference to its self-evident and universal principles. The Lord Chancellor seems to have considered it quite unnecessary to enter at any length into his reasons for reversing, or to offer any any deferential suggestions for putting aside the unanimous conclusion of their lordships of the First Division. Lord Brougham, who also heard the appeal argued, concurred in the reversal.

"Since writing the above, we observe another case, of which we also give a report, in which a decision of the Court of Session has been reversed by the House of Lords—namely, that of the *Caledonian and Dumbartonshire Railway Company v. the Helensburgh Harbour Trustees and Sir James Colquhoun*.' This is just another instance of the House of Lords preferring a simple principle of law to a vast amount of Edinburgh Parliament-house hair-splitting. The judgment of the House of Lords, in this second case, may appear to be in the teeth of that to which we have just referred; but it is in reality quite consistent with it. In the first case, the agreement was within the powers of both parties, and the Court of Session refused to enforce it. In the second, it was not within the powers of both parties, and the Court of Session did enforce it. The law is quite clear that if both parties to an agreement be competent to enter into it, that agreement must be enforced; but it is just as clear that if either party is not competent, the agreement is null and void. This distinction consistently explains both reversals, and there can be no doubt that the House of Lords has fairly applied the law in both cases. In fact, if the Court of Session had simply given effect to the law as lately administered to our friends of the old police commission—that corporate funds can only be applied for corporate purposes—it never could have pronounced such a decision as that now reversed. It is the more remarkable as being, like *Sprot's* case, a unanimous decision of the First Division of the Court. It cannot be said that either case involved any peculiar principle of Scotch law. On the contrary, it will be admitted on all hands that the law of Scotland, in both cases, is equally the law of England. The great error of the Edinburgh judges seems to be that they seldom go back to first principles, but select some superficial feature of a case as the turning point of their decision, arguing from abstract intellectual propositions backward to the facts of the case, instead of taking the facts, and then finding a key in the law as it is to unlock any difficulty in dealing with them. These just reversals in no way compliment the wisdom of the Scottish Bench."



## LAW OF ATTORNEYS AND SOLICITORS.

## LIEN ON DEED FOR COSTS OF PREPARATION.—PRODUCTION AS EVIDENCE.

MR. CLIPPERTON, a solicitor, was served with a subpoena, on behalf of the three defendants, to produce before the Examiner a deed, which had been prepared by him for Benjamin Norton, deceased; and it appeared that neither of the three defendants, on whose behalf the production was sought, was his representative. Mr. Clipperton attended, but refused to produce the deed, on the ground that he had a lien thereon for the costs of the preparation.

On a motion that he might be ordered, at his own expense, to produce the deed before the Examiner, and pay the costs, the *Master of the Rolls* said:—

"I am of opinion that Mr. Clipperton is bound to produce the deed. The lien of a solicitor entitles him to retain documents on which he has a lien against all the world; and I have always expressed an anxiety to preserve to solicitors the benefit of their lien; but there is a marked distinction between a production of documents for the purposes of evidence, and taking them out of a solicitor's possession.

"A solicitor's lien must be the same, whether he is the solicitor in the cause, or a mere witness; and in a cause, it is a matter of daily experience, notwithstanding a solicitor has a lien on the papers in the cause, to compel their production. Why should his rights in respect of his lien be different, when he is called upon as a witness to produce papers in his possession for the purposes of justice? The only question now is, whether the lien of a solicitor on a deed, can entitle him to prevent its being given in evidence in this cause. I think not.

"There is a marked difference between the rights of a mortgagee and that of a solicitor having a lien on papers. The mortgagee has no lien on the deeds, he has a charge on the land. At law, he is the owner of the estate, the deeds evidence his title to the property; and the Court, therefore, will never compel him to produce the evidence of his title, until his claims have been found. But a lien on deeds does not affect, and is not a charge upon the property; it affects more the parchment or paper which happens to be in his hands. Lord Lyndhurst thought that the lien on a document was no reason why it ought not to be produced for the purposes of justice at the trial; and Sir John Leach, in *Brassington v. Brassington*, 1 Sim. & Stu. 455, compelled a solicitor to produce documents on which he had a lien for the purposes of evidence. The case of the *Oxford and Worcester Railway Company*, 1 De G. and S. 728, was very different; there the order was for the delivery of the papers, which is a different and distinct matter. It is obvious that no order for the delivery up of the document can be made, but it is the right of the parties, and essential to the due administration of justice, to have it in evidence; and I am of opinion that Mr. Clipperton is bound to produce this deed before the Examiner. I am, however, of opinion, that he is justified in saying he will not part with it.—No costs." *Hope v. Liddell*, 20 Beav. 438.

## LAW OF COSTS.

## OF PLAINTIFF IN ADMINISTRATION SUIT.

AN order was obtained upon the application of a simple contract debtor for the administration of an intestate's estate, which it appeared was greatly insolvent. The amount due from the administratrix was insufficient to pay the only specialty debt which had been proved, and the costs of the administratrix; and pending the proceedings, notice of this was given to the plaintiff, but he still persisted in prosecuting the order.

The *Master of the Rolls* held that the fund was to be applied first in paying the costs of the administratrix, then in paying the plaintiff's costs down to the notice, and the residue in payment of the specialty creditor. *Sullivan v. Bevan*, 20 Beav. 399.

## OF CREDITOR'S PROCEEDINGS AT LAW AFTER NOTICE OF ADMINISTRATION DECREE.

NOTICE was given to a creditor, who was proceeding at law for the recovery of his debt, of a decree made for the administration of the estate of the deceased. He, however, continued the proceedings in the action; and a motion was made for an injunction to restrain the action.

The *Master of the Rolls* said—"I am of opinion that the creditor must pay the costs of this motion; but he may set them off against his costs of the action up to notice of the decree." *Gardner v. Garrett*, 20 Beav. 469.

## PUBLIC RECORD REPOSITORY.

THE Seventeenth Report of the Deputy Keeper of the Public Records has just been published. Such of our readers as are interested in searching ancient records for legal or quasi legal objects, such as descents or genealogies, are aware that no less than nine houses in Chancery Lane, opposite the Incorporated Law Society, have been taken possession of, in order to remove the papers and documents from the White Tower and the War Office Dépôt, for the purpose of enlarging the space required in carrying on the war.\*

The report details the operations connected with this removal, and the delays and inconvenience thereby occasioned. We extract the following:—

"The exigencies of the recent hostilities in which your Majesty has been involved, have recoiled severely upon this department. Not merely have the transactions arising out of these public necessities very materially impeded the progress of the works connected with the progress of the general repository, and the transfer of records thereto, but they have also much disturbed the performance of the ordinary duties of the establishment, these ordinary duties being increased in pressure by the extra duties cast upon the officers. Amongst others it may be noticed that the needful communications with the various public departments arising out of these transitory

\* The war having ceased, it may be expected that the Record business will now proceed without interruption.

transactions and the progress of the general repository have more than doubled the official paper work in the Deputy Keeper's and Secretary's Department.

"When instructions were settled for the first block of the general repository according to the plans given and explained in the estimates presented to the House of Commons (Sessional Paper, House of Commons, 1850, No. 571, viii), proposed to be erected in the year 1850-51, it was calculated that the same would contain all the records then in the custody of the Master of the Rolls, save and except the Admiralty records deposited in the White Tower. For these no space was reserved. As a place of deposit, the White Tower is reasonably safe, and as access to them is not frequently required, it was considered that a clerk, whom it was and is proposed to retain in the present Record Office in the Tower, would be sufficient to look after the same, and transact any business arising out of other records which it might be thought expedient to retain either in the White Tower or the Wakefield Tower. For it was thought probable that in calculations, however carefully made, errors could scarcely be avoided when applied to so large a mass as the public records; and it was afterwards found that there might scarcely be sufficient room in the general repository for the records then in the custody of the Master of the Rolls, and the accruing records of the classes which it might be expedient to receive.

"Under this arrangement the White Tower would have been a provisional repository until the second block of the building No. 2, and the progress of the general repository, and the deposit of the records therein, would have been regularly effected. But these schemes were frustrated through the measures adopted pursuant to the application made by the storekeepers of your Majesty's Ordnance, praying that the records should be removed from the White Tower, as is stated in the sixteenth report (1. § 9), and the tower given up to the Board of Ordnance. The Master of the Rolls declined compliance with such request. But further repeated and urgent requests having been made to him by the Board of Ordnance, his Honour, though much regretting the labour and expense which would be incurred and sustained by this department in consequence of the removal of the documents from the Tower, assented to the proposal, provided accommodation could be found for the documents in the vicinity of the general repository, the whole of that repository having been appropriated for the reception of other records already in his custody; and inasmuch as he was informed that the block of houses situated between Chancery Lane and the Rolls Yard, at the disposal of the Board of Works, would be convenient for the deposit not only of the Admiralty records, but also of the War Office documents, it was suggested by his Honour, 22nd March 1855 (Sixteenth Report, Appendix, No. 1 b), that such houses should be assigned to the record department. The Board of Works assented to this proposal, and gave possession of the said houses, Nos. 8, 9, 10, 11, 12, 15, 16, 17, and 20, Chancery Lane, to the officers of the record department, in or about November 1855, save and except No. 12, of which possession cannot be obtained till 5th January 1857. As soon as possession was obtained, the Board of Works commenced fitting up the houses for the reception of the documents, and in proportion as the fittings up have advanced, the removal of the said documents has been commenced, and is now in progress.

"Previous, however, to the removal of any Admiralty documents from the Tower, communications were made to the Admiralty as to the expediency of destroying a great number of books and documents which appeared to be useless; and for this purpose various communications took place between Sir John Liddell, the Director-General of the Medical Department of the Navy, and Mr. Hardy, the Assistant Keeper of the Branch Record Office at the Tower; and they, having carefully examined the documents, agreed in opinion that certain classes as reported to the Master of the Rolls by Mr. Hardy, by his reports of the 12th of January and 13th February 1856, should be retained, and the others delivered up to your Majesty's Stationery Office for the purpose of being pulped.

"All the impediments and inconveniences resulting from the before-mentioned circumstances have been exceedingly aggravated by the imperative necessity of obeying the commands proceeding from the Lords of your Majesty's Treasury, concerning the receipt into the custody of the Master of the Rolls of papers contained in a very capacious house, 6, Whitehall Yard, called the War Office Depot (Sixteenth Report, 1. § 12.; 11. § 44. This house or receptacle was filled from loft to cellar with documents specially belonging to the War Office Branch of the War Department; and it was therefore earnestly represented by the Master of the Rolls that the space which these documents would require was absolutely necessary for the accommodation of the records in the Carlton Ride and other repositories, and the measures contemplated for the removal of the records into the general repository would be impeded or stayed.

"Various communications took place, and his Honour ultimately stated that, considering it his duty, he would do his best to aid the treasury during this national crisis; and therefore he would endeavour to receive the papers into the general repository as a temporary deposit, but it would be needful to contemplate an extension of the building, and possibly an increase of the establishment. The removal was effected in the manner described in the Sixteenth Report (1. § 12.; 11. § 44). When the documents were brought into the building there were no means of finding space for the same except in the extensive corridors, which had been already prospectively appropriated for other records. The War Office department stated in their communications that the papers must not be stowed away so as to be inaccessible, but they must be arranged in such a manner as to allow the officers of the War Department to consult them whenever required, and as this is very frequently the case (11. § 38), it was needful to retain the papers as nearly as possible in the same order as they were in the War Office Depot, in order that the officers of the War Department might do their duty. To effect this end, the presses were removed bodily from Whitehall Yard, and set up in the corridors of the general repository, which they now fill, the corridors being 169 feet in length. This arrangement forced upon this department by necessity, was and still is objectionable and inconvenient, as impeding the erection of the iron presses therein, and contrary to the principle adopted in the construction of the building, which requires the total exclusion of all combustible materials, and an enormous mass of wood and paper has been accumulated in a locality where, so long as workmen shall be employed upon the premises, the documents would be most likely to be in danger. But at length

the arrangement for giving up to the use of this department the houses in Chancery Lane, before mentioned, was made. The needful fittings are in progress, and the removals are proceeding as before-mentioned, but a very large proportion of the time of the Deputy Keeper and the other officers of this establishment, who are concerned in the direction and management of the business, as well as those who are practically employed in removals, has been abstracted from the time needed for the regular official proceedings, and all the labours of removal will have to be performed over again when the contemplated addition shall be made to the general repository and accommodation therein afforded for the documents now in the houses in Chancery Lane."

## COMPULSORY REFERENCES AND COMPROMISES.

### AUTHORITY OF JUDGES, COUNSEL, AND ATTORNEYS.

THE attention of the profession has been several times called to the instances in which the judges or the counsel have exercised the power, which it was assumed belong to them, of inducing or compelling the compromise of an action, or its reference to a barrister, when it appeared that the discussion of the facts in open Court would be painful, or more frequently when several complicated issues were to be tried, or details of account entered into, which would inconveniently occupy the time of the Court. It was supposed that when a brief was delivered to counsel, and the case was before the Court, the client and his attorney had no further control over it, and that the Court, or the counsel in the cause might deal with it as in their discretion they deemed fit.

In the time of Lord Chief Justice Ellenborough, he would have been a bold suitor or attorney who ventured to dissent from the intimation given by his lordship, that the case in hand should be referred to one of the merchant special jurors who usually attended at Guildhall, or to some learned counsel whom the great chief deigned to patronize. There were sometimes 500 causes in the *Nisi Prius* list, and the learning, energy, talent, and skill, with which they were tried or "disposed" of was marvellous. Perhaps, the necessity that existed of preventing an increasing accumulation of remanents, in some degree justified the power which was exercised to keep them in due bounds. But now that the cause lists are by no means overburthened, the usual course of law may properly be taken, though occasionally tardy and troublesome.

Some cases have occurred very recently, which appear to be entirely at variance with the doctrine of forensic power over the rights and interests of suitors and the attorneys by whom they are expressly represented on the record before the Court. These cases have attracted the attention of the press. In one of them it appears the suitor was clearly wrong, because there was no dissent expressed to the course taken by counsel, until a long subsequent

period when the arrangement which had been made, was to be carried into effect; but in the other case the refusal of the client was expressly declared, and the Court held that such refusal must prevail, and that the Court has no power to effect a compromise against the consent of the party. It appeared in the result that the clients refusal was most injudicious.

In a leading article, treating of this important question, a writer in the *Daily News* of the 21st June, observes that—

"There is no point which seems to give rise to so much misapprehension, and yet which is so simple in itself, as the power which the judge who tries a cause or the counsel or attorney of a suitor has to bind the client. Some nervous persons seem to think that the suitor is at the complete mercy of his attorney or his counsel—that he has no sooner put his cause into their hands than he has utterly surrendered his own will. Thenceforward the poor man becomes a nonentity. Happily this is an exaggeration. And it is curious enough that two cases have lately occurred in our courts—the one in the Court of Common Pleas, under the name of "*Swinfen v. Swinfen*,"\* the other was tried before Lord Campbell †—which perfectly illustrate the subject.

"In the first case it was alleged that Sir Frederic Thesiger and the Attorney-General had compromised a case at Stafford, by which the defendant had been deprived of an estate worth £50,000. The defendant having refused to carry the arrangement of the two counsel into effect, an attachment was moved for. Part of the argument on behalf of the reluctant defendant consisted of an affidavit, in which it was declared that neither her counsel nor her attorney had any authority to enter into the compromise. This affidavit, however, it should be observed, had been sworn long after the time at which the defendant knew that the compromise had been entered into—for that had been during the last assizes at Stafford—and, indeed, only some few hours before the case came on to be heard in the Common Pleas at Westminster. The Court—very properly, as we think—refused to listen to any such affidavit. In the first place, it appeared that not one of the counsel who had been employed at Stafford was employed in London, for the very good reason alleged by the Attorney-General, that these gentlemen could not have been induced to support the statements in the affidavit, which however they, and they alone, could know to be false.

"Nothing, of course, could be a grosser dereliction of duty, as the Attorney-General observed, than that a counsel should presume to make a compromise in opposition to the wishes both of attorney and client. An imputation so gross was not to be presumed, and after a lapse of so long a time the Court considered that it was bound by what had taken place, and that it would not have been justified in re-opening the matter. If, as Mr. Justice Cresswell observed, the client does not approve of what his counsel or his attorney is doing, he may withdraw his brief, and employ other persons. But certainly a man ought not to be permitted to deny the authority of his agents for the first time when the compromise to which those agents have agreed is about to be enforced. It is obvious that it would never do to

\* See the L. O. Report, p. 152 ante  
† *Stephenson v. Palmer*, *Daily News* June 20.

permit a client to question every single act of his counsel, or his attorney. These agents must have some discretion. They must be allowed some scope. Before they consent to a compromise, it is their duty—as it certainly is their practice—to consult the client. And unquestionably, if any counsel or any attorney ventured to compromise a suit against the express wishes of his client, there would be ample reason for disbarring the counsel, and for striking the attorney off the rolls. The matter, of course, would be very different if the counsel or the attorney assented to an agreement with an imperfect knowledge of the facts; indeed, the Attorney-General himself laid the rule down, that the client was only bound where the counsel was at the time apprised of all the facts necessary to enable him to form a judgment, but he would be relieved from any agreement if consent had been given by counsel in ignorance of some material circumstance. In this case, however, the Attorney-General asserted that the affidavit on which the imputation was made was a tissue of falsehood.”

The second case was as follows, and shows very clearly that a client may refuse a compromise, even where, if she had properly understood her own case, she would at once have agreed to it:—

“A certain Miss Palmer, somewhat advanced in years, had given into custody a man named Stephen, and his wife, for having stolen some of the property of Miss Palmer’s mother. An arrangement having been suggested in court, Mr. Barber, the solicitor of Miss Palmer, in vain endeavoured to persuade the elderly spinster to arrange the matter. Her counsel, Mr. E. James, then tried his powerful arts of persuasion, but with no better success. Even my Lord Campbell failed in the same attempt. She declared that, without her mother’s consent, she could do nothing. The old lady was then produced—very aged but very active, and extremely deaf. She was immediately raised to the Bench. His Lordship with thunderous eloquence advocated the compromise which had been suggested; but the old lady was fixed as adamant. She would go on with the suit. The action did go on; and it turned out that, in the opinion of the jury, the property which Miss Palmer claimed really belonged to Mr. and Mrs. Stephenson, and the consequence was that Mr. and Mrs. Stephenson had a verdict for £10, and Miss Palmer, the obedient daughter, and Mrs. Palmer, the obstinate old mother, were obliged to pay all the costs. But lamentable as is the result to the two ladies, it is clear that they have most successfully vindicated the right of a client to do as he pleases—to reject the advice of judge, counsel, and attorney. Here, however, it will be observed that the clients objected on the spot. They did not lie by as they did in the former case. They did not first of all permit the case to be closed—the assizes to be concluded—and the whole matter to remain quiet for months, and only call in question the conduct of their counsel when a demand was made to carry the compromise into effect.”

The writer then proceeds to guard himself against a possible misconstruction of these observations. He says:—

“It is vain to deny that in many cases, and especially during the assizes, judges are far too eager to compel suitors to a compromise—to drive them before arbitrators. It is said indeed that many cases brought before a jury are not fit subjects for

such a tribunal. Such an objection ought to be made and decided upon at an earlier stage of the proceedings. But in any case the judge ought not to delegate his functions to an arbitrator. If a barrister travelling the circuit is fit to make an award, much more is the judge himself fitted to perform the same office. Why should the unfortunate suitor be compelled to pay the fees, not only of his attorney and his counsel, but also the fees of an arbitrator? The duty of the judge of assize, in cases not fit to be submitted to a jury, is himself to sit as arbitrator. True, it might occupy a considerable time. But these judicial officers are amply remunerated. In some instances, indeed, we know that a judge has sat as arbitrator, and has drawn up the award; but we suspect that, if the time consumed in hearing the case and in drawing up the award were known, there would be ample reason found for the notorious fact—that there is scarcely one instance known in which a judge has sat as an arbitrator. This duty ought, as it seems to us, to be imposed upon the judges of assize at the will of the suitors. For thus they become judges of fact as well as law, and instead of being restricted to giving one single sort of judgment, sounding, as the lawyers say, in damages, they are enabled by means of an award to do complete justice between the parties. Such a reform is so obvious that the wonder is it has been so long delayed.”

## INCORPORATED LAW SOCIETY.

### ANNUAL GENERAL MEETING.

THE Annual General Meeting of the members of the Incorporated Law Society was held in the hall of the society in Chancery-lane, on Tuesday the 24th inst., for the election of the President and Vice-President of the society, and of ten members of the Council, in lieu of the members who went out of office in rotation.

The chair was taken by Keith Barnes, Esq., the President.

The following gentlemen were re-elected members of the council:—

William Strickland Cookson, Esq.  
William Loxham Farrer, Esq.  
John Irving Glennie, Esq.  
John Swarbrick Gregory, Esq.  
George Herbert Kinderley, Esq.  
Germain Lavie, Esq.  
Edward Leigh Pemberton, Esq.  
William Sharpe, Esq.  
William Tooka, Esq.  
Edward Archer Wilde, Esq.

Edward White, Esq. was elected President,  
Edward Leigh Pemberton, Esq. Vice-President,  
And the following gentlemen as auditors:—

James Beaumont, Esq.  
Charles Few, jun. Esq.  
Robert Manley Lowe, Esq.

The Annual Report of the Council of the proceedings of the past year was then read by the Secretary. It comprised—

1. A statement of the Parliamentary measures for the alteration of the law, which, more or less, affected

the interests of the general body of attorneys and solicitors.

2. The efforts made to place upon a proper footing the fees of solicitors for business in the Court of Chancery.

3. The proposed new courts and offices—changes in the practice—questions of professional usage—encroachments on the rights of solicitors, and cases of mal-practice.

4. Legal education and examination of articulated clerks.

5. The general affairs and present position of the society.\*

The President adverted to some of the prominent topics in the report, which more immediately applied to the business of the day:—such as the fees of solicitors—the proposed law university—the intended south wing of the society's hall—the prosperous state of the funds of the society—and the large increase in the number of members.

It was then resolved unanimously—"That the Report of the Council be received, approved, and entered on the Minutes; and that such parts of it as the council think fit be printed and circulated amongst the members."

The auditor's Report of the accounts of the society was next read, and it was resolved unanimously—

"That the Auditor's Report be approved and signed by the President."

The cordial thanks of the meeting were then presented to the President, Vice-President and Council, for their great and continued attention to the interests of the society, and their exertions for the benefit of the profession in general.

## UNITED LAW CLERKS' SOCIETY.

The twenty-fourth Annual Report of the Committee of Management, read at the Anniversary Dinner at the Freemason's Tavern, 17th June, 1856, Mr. ROUNDELL PALMER, Q.C., M.P., in the chair.

THE United Law Clerks' Society was established in 1832, for the purpose of affording to its members pecuniary assistance in the events of illness, or inability through age or other infirmity to earn the means of subsistence, and on the death of a member or member's wife. To accomplish this a fund was formed by the monthly contributions of the members and the donations of the profession, and which was called "The General Benefit Fund," to distinguish it from a benevolent fund formed at the same time, and in the same way, for assisting law clerks, whether members or not, their widows and families, in temporary distress, with gifts of money to the extent of £5. This benevolent fund was called "The Casual Fund."

The first branch of the society's expenditure out of the general fund arises from relief afforded to its members when disabled by illness from following their employ. During the past year eighteen members have received this relief. Four of these members are still in receipt of it; three cases terminated in death, and the remaining eleven members received it

until restored to health, or able to resume their employ. Each member received one guinea weekly during his illness. The expenditure for the year on this account has been £137 15s. 4d., and the total expenditure on account of illness, since the year 1832, £3,487 11s. 10d.

The second branch of the society's expenditure out of the same fund consists of a weekly allowance varying from 10s. to 14s., granted for life to all members who are entirely disabled by some permanent affliction from following their employment. This allowance is granted irrespective of age, and without the risk or expense of an election. The only requirement necessary is, that the member's permanent disability be established to the satisfaction of the society's medical officer. At the last anniversary there were seven members in receipt of this allowance. Since then a new claim has been made by a member aged sixty-three, who, after thirty years service in the profession, the last thirty-eight of which were spent in one office, found himself past labour. This claim was immediately allowed. It is the only existing one where disability arises from old age. There are six which result from loss of intellect, and one from loss of sight. Of these eight members three receive yearly in weekly payments, £31 4s. each, and the other five £36 8s. The total yearly payments to these superannuated members amount to £275 12s., or the yearly interest of £3,000.

The third and last branch of the society's expenditure out of the general fund consists of an allowance of £50 made to the family of a member on his decease, and of half that sum on the death of a member's wife, should he survive her. There have been four deaths amongst the members during the year, and to the family of each a sum of £50 has been paid. Four deaths have also occurred amongst the members' wives. Each of these members received the sum of £25. The payments to members and their families on account of death alone have now reached the sum of £5,277 10s.

By death, removal, and other causes, the society has lost several annual subscribers; but the committee report with pleasure that, since the last anniversary, a considerable increase has taken place in the number of members, whose contributions, during the year, have amounted to £1,822 16s. 6d.

The committee have always kept in view that the greatest burthen which the society will have to bear will arise from claims upon the Superannuation Fund. The society has been established twenty-four years, and many of its earlier members will, in all probability, at no distant period, be claiming that benefit for which they have contributed so many years. The yearly amount paid to a superannuated member is not large, but it requires the interest of more than £1,000 to meet each claim. To make provision against this, the committee are using every exertion to form a capital sufficient to provide for all contingencies, and effectually guarantee the payment of all superannuation claims whenever they may arise. On the 2nd of April, 1855, the capital of the society amounted to £18,089 19s. 5d. The receipts for the year, on account of the general fund, have amounted to £2,319 11s. 7d., and the amount expended in affording relief in sickness, on superannuation and death, including necessary disbursements, has been £1010 2s. 11d., leaving a balance of £1,309 8s. 8d., which has been added to the society's investments. These investments are all made with the commissioners for the reduction of the National Debt. On the 20th of May, 1855,

\* We shall be able to lay before our readers this valuable report, or extracts therefrom, at an early period.

they amounted to £18,168 19s. 2d., and on the 20th May, in this year, to £19,728 8s. 5d.

The committee have received thirty-eight applications for relief out of the casual fund. On careful investigation thirty-four of these were found to be persons deserving but distressed persons, and they were relieved as far as the funds permitted. The remaining cases were from undeserving persons to whom assistance could not be granted. The committee cannot here particularise the circumstances of the applicants, but they may state that, of the thirty-four relieved, twenty-three were from persons who had never contributed to the fund. Eleven were from the widows of law clerks, some advanced in years, others were, with very slender means, creditably bringing up their families. The committee have power, out of the same fund, to grant assistance to members, by way of loan, repayable to suit the borrower's circumstances, and free from any kind of charge. Assistance of this nature has been afforded to several members who would not take it by way of gift. In meeting these gifts and loans a sum of £351 0s. 0d., has been expended, making the total relief granted out of this fund, since the year 1832, £5,575 16s.

The casual fund is without any capital. The constant demands upon it render any investment impracticable. In April, 1855, the cash in hand amounted to £43 10s. 5d., during the year £351 19s. 9d. has been received, and £351 8s. 0d. expended, leaving a balance in hand on the 7th April, 1856, £44 2s. 2d.

The committee hope this report of their proceedings will prove satisfactory to the donors and members. Every claim made has been promptly satisfied, and some addition made to the invested capital. Since the foundation of the society in 1832, it has been the means of affording pecuniary assistance in time of affliction to its members and their families, and to law clerks generally and their widows, to an amount exceeding £14,000. This sum principally arose from the contributions of the members, but it was partly the result of the liberality of the profession, for whose kind sympathy and support the committee take this opportunity of tendering their sincere and grateful thanks. They hope that so long as the society continues fairly and zealously to carry out the benevolent object for which it was established; it will receive a continuance of that support without which many of its benefits must be considerably curtailed, and its general means of usefulness greatly diminished.

HARRY G. ROGERS, Secretary.

*Fremson's Tavern, London,  
17th June, 1856.*

## SELECTIONS FROM CORRESPONDENCE.

### NOTICE TO QUIT—COUNTERMAND.

A. holds of B. a house as tenant from year to year from Midsummer. A., anterior to Christmas-day, gives B. the usual six months' notice to quit at Midsummer. Can A., before the expiration of the six months, countermand his own notice to quit? If so, it behoves a landlord, in case he wishes to get rid of his tenant, also to give his tenant a like notice. M. A.

### INSURANCE AND LOAN OFFICES.

Since I addressed you (*vide p. 181*), another in-

stance has come within my knowledge. A clergyman, A., borrowed £20 of a loan office, and gave a note or bill for the amount, for which an enormous discount was paid. Another clergyman, B., indorsed the bill by way of security. A. died. B. is sued, and having his goods seized under an execution for debt and costs is obliged to pay upwards of £30, the plaintiff's attorney insisting on an immediate sale by the sheriff unless they are paid;—and this, notwithstanding the unfortunate surety was confined to his house by a severe and alarming illness.

AN ATTORNEY.

### INDISPUTABLE POLICIES.

Lord Campbell, in summing up the evidence on the 16th June inst. in the cause of Truelock v. The Householders and General Life Assurance Company, one of the so-called indisputable offices states with great truth that these modern life assurance companies held out great temptations, and brought about the most lamentable consequences. Verdict for the plaintiff £14,000.

On the 18th also his lordship in a similar case against the Prince of Wales Life and Education Assurance Company, to recover on a policy for £7,000, said the company appeared objectionable in respect of the inducements which they held out for the insurance; that the practices which he condemned led to the most mischievous consequences, and he was afraid that some companies were ready to take any risk in order to obtain the premiums regardless of the consequences. Verdict for plaintiff for £7,000.

One of the jurymen said the practice of the modern insurance offices was most prejudicial, and cut at the root of making provision for helpless families. In this observation Lord Campbell said he most heartily concurred.

In one case fourteen years was added to the life of the assured, or rather the premiums were taken as if he had been fourteen years older. A similar grasping conduct was manifested in the other case.

A SUFFERER.

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when Gazetted.*

Bird, George Adam, Kidderminster, in and for the county of Worcester.—May 27.

Jackson, Richard, Chorley, in and for the county of Lancaster.—June 13.

Pickford, Charles, Cornelius, Forbes, Congleton, in and for the county of Chester.—June 20.

Woodburne, Thomas, Ulverston, in and for the county of Lancaster.—June 10.

### COUNTRY COMMISSIONER.

*To Administer Oaths in Chancery. Appointed under the 16 & 17 Vict. c. 78, with date when Gazetted.*

King, Thomas, the younger, Brighton.—May 27.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 27th May to 20th June, 1856, both inclusive, with dates when Gazetted.*

Brace, George; and George Nathaniel Colt, 24, Surrey-street, Strand, attorneys and solicitors.—May 27.

Hill, Henry Rivington, and Herbert Williams Reeves, 23, Throgmorton-street, city, attorneys and solicitors.—May 27.

Jones, Francis William Reeve, and Samuel Betteley, 28, New Bridge-street, Blackfriars, attorneys and solicitors.—May 30.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

In re Ashworth. June 19, 1856.

INFANTS.—GUARDIANS.—RESIDENCE.

*The father of two infants on his deathbed, expressed great anxiety that his elder child should have the benefit of his sister's care with whom such child had been. His wife, who died soon afterwards, gave birth to another child, who also was under the care of such sister. The wife had however by will appointed her brother and her sister's husband as guardians, who consented to act. The children had since the wife's death resided with their father's sister, with the consent of all parties. An application had been made to Vice-Chancellor Stuart, who appointed the mother's brother and his wife, and another of the mother's sisters and her husband guardians, and directed them to reside with the former: On appeal held that the children should remain with the father's sister and her husband until further order, subject to the supervision of their guardians.*

It appeared that on the death of Mr. Ashworth in August, 1841, he had expressed a great anxiety that his infant daughter should have the benefit of his sister's care (Miss Ashworth, now Mrs. Patrick), with whom she had been, and a second daughter born soon after his death had the same advantage. The wife died in May, 1846, having by her will appointed her brother, Mr. Howarth, and Mr. Munn, her sister's husband, guardians, and they consented to act. The children lived with Miss Ashworth with the consent of all parties, and she had since married Mr. Patrick.

An application had been made to the Vice-Chancellor Stuart, who appointed Mr. Howarth and his wife, and Mr. Slater and his wife (another of the wife's sisters) as guardians, and directed the children to reside with the former, whereupon this appeal was presented.

*Malins and Baggallay* for Mr. and Mrs. Patrick, *Bacon and Piggott* for Mr. and Mrs. Slater in support. *Cairns and Amphlett* for Mr. and Mrs. Howarth, and Mr. Munn *contrâ*.

*Jolliffe* for the trustee.

The Lords Justices said that the children ought not to be separated by being sent to school; and it would be a strong course to remove them from Mrs. Patrick after the length of time they had been there. There was the best possible understanding between the parties, and it was to be hoped it would be continued. The order would be for the children to reside with Mr. and Mrs. Patrick, until further order, under a governess, and be subject to the supervision of the guardians.

## Master of the Rolls.

Reimers v. Drace.—June 19, 1856.

AFFIDAVITS, FILING.—SWORN BEFORE FOREIGN JUSTICE.—OFFICE COPY.

*Certain affidavits were sworn before a judge of one of the courts of justice at Emden, Hanover, whom the British Consul certified to be a person before whom, according to the law of Hanover, oaths could be taken. The affidavits were writ-*

*ten in English on one sheet, and in German on the other. The Clerk of Records and Writs was directed to file the affidavits, but office copies of the English parts only to be given.*

It appeared that certain affidavits in this suit had been sworn before a judge of one of the courts of Justice at Emden, Hanover, whom the British Consul certified to be a person, who, according to the law of Hanover was entitled to administer oaths. It also appeared that the affidavits were written in English, on one side of each sheet, and in German on the other. There was no evidence, however, that the English was a correct translation.

*Bristowe*, for the plaintiff, who resided at Emden, in support stated, he had examined the translation, and that it was correct.

The defendant consented.

The Master of the Rolls said that the affidavits might be filed, but that office copies would only be given of the English portions.

## Vice-Chancellor Kindersley.

Alcock v. Kempson. June 19, 1856.

PAYMENT OF FUND TO SOLICITOR OF PARTY IN AUSTRALIA.—UNDERTAKING.

*Order made for payment out of Court, of the share of a fund to the solicitor of the party entitled, who was in Australia, upon his undertaking to account for the same to such person, and on the production of a letter from such party that the same should be done.*

It appeared that one of the parties entitled to a share of a fund in court was in Australia, and this application was now made for payment of such share to his solicitor, upon his undertaking to account to him for the same.

*Rasch*, in support.

The Vice-Chancellor said that an order might be taken on the production of a letter from the party in Australia, to the effect that such payment should be made.

In re Electric Telegraph Company of Ireland. June 21, 1856.

PETITION.—COSTS OF SECOND.—AFFIDAVITS FILED SINCE ORDER ON ROLLS PETITION.

*A petition was presented for the winding-up of a company, but it appeared that the clerk of the petitioners' solicitor had omitted to search at the Rolls, where a petition, having the same object, had been presented. Held, that the second petitioners must pay the costs of the other petitioners who appeared and opposed; and that no costs of any affidavits filed since the order at the Rolls could be allowed.*

THIS was a petition to wind up the above company. It appeared that the solicitor of the petitioners had directed his clerk to make the proper searches to ascertain whether any other petition had been presented, and that the clerk had only searched at the secretary to the Lord Chancellor, and not to the Master of the Rolls, with whom a petition, having the same object, had been presented.

*Glasse and Roxburgh*, in support; *Selwyn and J. J. H. Humphreys*, for the petitioners, at the Rolls, *contrâ*.

The Vice-Chancellor said, that as the petition at the Rolls had been first presented, the order must be

made *prima facie* upon it. This had been done, and no order could, therefore, be made on the present petition. With respect to the costs, there had been an omission to search at the Rolls' secretary, and the petitioners must pay the respondents' costs; and no costs would be allowed of any affidavits filed since the order had been made at the Rolls.

*Smale v. Hodgson.* June 21, 1856.

MASTERS' ABOLITION ACT.—MASTERS' REPORT OF DELAY.—FURTHER DIRECTIONS.

*The parties to a suit were summoned before the Master, under the 15 & 16 Vict. c. 80, s. 7, and a report was made under s. 8 on the whole case as to the cause of delay: Held that such report was general, and was properly set down on further directions.*

It appeared that the parties to this suit had been summoned before the master under the 15 & 16 Vict. c. 80, s. 7, which enacts that "in order as expeditiously as may be to wind up all the causes, matters, and things which may from time to time be depending before or have been referred to the Masters in Ordinary of the said court, it shall be lawful for every master, at any time after the passing of this Act, to summon as he shall deem fit all or any of the parties to any cause, matter, or thing so depending, or their solicitors, and thereupon to proceed with such cause, matter, or thing, and give such directions and make such order as he may think necessary for the purpose of settling and winding up the same; but any such order shall be subject to be discharged or varied by the Court upon application made for that purpose; and the master shall be at liberty to proceed for the purposes aforesaid in the absence of any of the parties or solicitors neglecting or refusing to attend the summons;" and he had reported generally on the whole case on the cause of the delay under s. 8, which provides that "in case the master shall be unable, by reason of the conduct of parties, or otherwise, to finally dispose of any cause, matter, or thing, he shall be at liberty to dispose of any part thereof within his power, and to report or certify on the whole of the case; and upon such report or certificate the Court shall make such order as it shall think proper on all or any of the parties, for the further prosecution of the suit or matter, or for the final disposal thereof, and for the payment of the costs thereof, including any of the costs which may have been incurred by reason of the conduct of the parties."

The case had been set down on further directions.

*Glass, G. Simpson, Gifford, and C. M. Roupell* for the several parties.

The Vice-Chancellor (after consulting Mr. Registrar Metcalfe), said that the report was general, and had been properly set down upon further directions.

**Vice-Chancellor Wood.**

*Manby v. Bewicke.* June 5, 1856.

SECURITY FOR COSTS.—PLAINTIFF'S NON-RESIDENCE WHERE DESCRIBED.

*An application was granted for security to be given for costs by a plaintiff, a labourer, who had not resided at the place where he was described of in the bill since April, 1855, and his solicitor refused to give any information where he could be found, and although he duly paid his rent for such residence.*

There was an application for an order on the plaintiff

to give security for costs. It appeared that plaintiff was a labourer, and rented a cottage at Louth in Lincolnshire, and had duly paid his rent, but that he had not been there since April, 1855, and his solicitor refused to give any information as to where he could be found.

Toller in support, citing *Bailey v. Gundry*, 1 Keen, 58. C. L. Webb contra.

The Vice-Chancellor said that on the authority of the case cited the usual order must be made for security for costs.

*Otter v. Vaux.* June 20, 1856.

MORTGAGOR AND MORTGAGEE.—SECOND MORTGAGEE'S RIGHT WHERE MORTGAGOR PURCHASES UNDER POWER OF SALE IN FIRST MORTGAGE.

*A mortgagee sold under a power of sale, which was not expressly recited in a second mortgage, although the latter was subject to such mortgage, and the mortgages covenanted for title except as appeared by those presents. The mortgagor bought of such purchaser, and the purchase-money was insufficient to pay the mortgage debt: Held that the second mortgagee was entitled to have a conveyance of the legal estate from the last mortgagee from the mortgagor.*

It appeared that an estate was mortgaged to a Mr. Goode, with the usual power of sale upon default in payment of the mortgage money, and that the same property was afterwards mortgaged to Mr. Geach (of whom the plaintiff was transferee). This latter mortgage was made subject to the prior mortgage, which was recited in the deed, but no notice was taken of the previous power of sale; but the mortgagor contended for title in the usual manner, "free from incumbrances except as appears by these presents," and also for further assurance. Mr. Goode exercised his power of sale and sold to a purchaser, from whom the mortgagor subsequently bought, but the purchase-money was insufficient to discharge the mortgage debt, and he then mortgaged to one Mostyn, who, however, had notice of the mortgage to Mr. Geach, and his transferee filed this bill for a conveyance of the legal estate.

*W. M. James and Gifford* for the plaintiff, cited *Toulmin v. Steere*, 8 Mer. 210.

*Rolt, Amphlett, R. R. A. Hawkins, and C. M. Roupell* for the defendants.

The Vice-Chancellor said that the power of sale was a mode of enforcing payment of the debt, and was now usually inserted in mortgage deeds; and that any one taking subject to a prior mortgage must be considered as having notice of its contents, and therefore of the power of sale. If the mortgagor had simply paid off the first mortgage, the effect would be to set up the second mortgage, and the mortgagor would not be able to set up the anterior charge against it, and there was no difference between that case and the present. The mortgagor could not set up the transaction against his own act, and it was analogous to the rule that a mortgagor could not, by obtaining an assignment of the mortgage debt to a trustee for himself, set up such assignment against a subsequent mortgagee. Then it was argued that where an estate produced a surplus the second mortgagee would be getting a lien both on the surplus and on the estate; but the mortgagor would have the full benefit of this, as the charge of the second mortgage on the estate would be not for his whole debt, but only for such part as the surplus was insufficient to discharge. The estate in the



mortgagor's hands was therefore liable to the plaintiff's claim, and a decree would be made for a conveyance, and for the appointment of a receiver in the meantime.

### Court of Queen's Bench.

*Bennett v. Thomson.* May 31, 1856.

COUNTY COURTS' ACT.—CERTIFICATE FOR COSTS, AFTER TRIAL.

*In an action for nuisance before a Serjeant-at-Law in the Commission of Assize, the plaintiff obtained 40s. damages, and a certificate was granted for a special jury, and that the action was brought to try a right: Held that the Serjeant had power to certify for costs under the 13 & 14 Vict. c. 61, s. 12, after the trial.*

THIS was an action for a nuisance, and on the trial before Channell, Serjeant-at-Law, at the last Somerset assizes the plaintiff obtained a verdict with 40s. damages, and Mr. Serjeant Channell had certified for a special jury, and that the action was brought to try a right. An application was afterwards made to him to certify under the 13 & 14 Vict. c. 61, s. 12, which enacts that "if the plaintiff shall in any such action as aforesaid recover a sum less than the sum in that behalf hereinbefore mentioned, by verdict, and the Judge or other presiding officer before whom such verdict shall be obtained, shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in any such County Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Court in which the said action was brought, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this Act had not been passed." And this application was now made on the question whether he had power to certify.

*J. D. Coleridge* in support.

The Court said that the section did not provide the certificate could only be given at the trial, and the learned Serjeant having co-ordinate power with a Judge of the Superior Court as acting under the Queen's Commission of Assize, could give the certificate asked for.

### Queen's Bench Practice Court.

(*Coram Wightman, J.*)

*In re Wright.* June 7, 1856.

BILL OF SALE.—AFFIDAVIT.—PRACTICE.

*The affidavit of execution of a bill of sale under the 17 & 18 Vict. c. 36, was taken before a Country Commissioner to administer oaths in Chancery, instead of a Commissioner in the Queen's Bench. A second copy was filed with the affidavit properly sworn: Held, that the course was to move for leave to take the first bill of sale and affidavit off the file.*

It appeared that the affidavit of the execution of a bill of sale had been sworn at Bristol before a Country Commissioner to administer oaths in Chancery instead of a Queen's Bench Commissioner. After the bill of sale was filed, a fresh affidavit had been made, and the bill of sale was again filed with the second affidavit.

By the 17 & 18 Vict. c. 36, s. 1, it is enacted, that "every bill of sale of personal chattels made after the passing of this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either imme-

diately after the making of such bill of sale or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, &c., be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within 21 days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed)."

*Keane* now applied for leave to add a memorandum in respect of the first bill of sale.

The Court said, that the proper course would be to move for leave to take the first bill off the file, and granted the rule accordingly.

### Court of Exchequer.

*Jessel v. Chaplin.* May 24, 1856.

COMMON LAW PROCEDURE ACT, 1854.—INJUNCTION.

—TAKING DOWN WALL.—OBSTRUCTING ANCIENT LIGHTS.

*A rule was made absolute for an injunction to restrain the defendant from continuing to obstruct the plaintiff's ancient lights, and although it involved his taking down so much of the building, constituting such obstruction.*

THIS was a rule nisi for an injunction on the defendant to restrain him from continuing to obstruct the ancient lights of the plaintiff. An action had been brought in which the plaintiff obtained a verdict.

By the 17 & 18 Vict. c. 125, s. 79, it is enacted that "in all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may, in like case and manner as hereinbefore provided with respect to mandamus, claim a writ of injunction against the repetition or continuance of such breach of contract, or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress"; s. 80 enacts that "the writ of summons in such action shall be in the same form as the writ of summons in any personal action; but on every such writ and copy thereof there shall be endorsed a notice that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction;" and s. 81 that "the proceedings in such action shall be the same, as nearly as may be, and subject to the like control, as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained; and in such action judgment may be given that the writ of injunction do or do not issue, as justice may require; and in case of disobedience, such writ of injunction may be enforced by attachment by the Court, or when such Courts shall not be sitting by a Judge."

*Montague E. Smith* showed cause against the rule.

The Court (without calling on *Bovill* in support), said that the rule would be made absolute for an injunction, notwithstanding it involved the pulling down so much of the building as obstructed the plaintiff's enjoyment of his ancient lights.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, JULY 5, 1856.

### THE AMENDED ECCLESIASTICAL COURTS BILL. — TESTAMENTARY JURISDICTION.

THE Solicitor-General's amended bill may now be considered as including within its clauses the several Bills of Sir Fitzroy Kelly and Mr. Collier, and we have before us the consolidated print as amended in committee and re-committed for further consideration. We shall proceed to notice briefly the principal parts of the measure as now under consideration, and the alterations which have been adopted since the bill was last before our readers.

There is to be a distinct "*Court of Probate and Administration*," as well of real as personal estate, with power to grant certificates of intestacy, and to decide on the construction of wills, to declare the rights of the parties, and administer the assets of deceased persons (s. 6).

The judge must have been an advocate of ten years' or a barrister of fifteen years' standing. The judges of the common law courts, the Master of the Rolls, and the Vice Chancellors may sit with or in the absence of the judge (ss. 6, 12).

Then a "*Testamentary Office* is to be established in such place as her Majesty in council may appoint (we presume) in the metropolis; and also *District Testamentary Offices* in each of the circuits of the county court judges (ss. 22, 3).

The *Officers of Court* (with power to increase the number) are to be—

#### In the Testamentary Office :

One principal Registrar;  
Three Registrars;  
Ten Official Proctors;  
So many principal Clerks, Assistant Clerks, &c., as may be necessary.

#### In the District Office :

One Registrar;  
So many Clerks as may be necessary (s. 24).

The Accountant-General and Taxing Masters of the Court of Chancery are to act as such in the New Court (s. 67).

As to the *Practitioners*, it is provided that

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the Registrars, Deputy Registrars and Proctors in the present ecclesiastical courts may, within a year, be admitted as solicitors and attorneys in the superior courts of law and equity (s. 33); and the Articled Clerks and Proctors who have already served, or may hereafter complete their service, are to be entitled to admission on the roll of solicitors on the same conditions as if they had been articled to solicitors (s. 34).

All solicitors and attorneys may practise in the Probate Court; and the commissioners for taking oaths in chancery may take oaths in the New Court (s. 35).

Proctors, solicitors, or attorneys appointed to any office under the act are not to practice (s. 124).

The registrars are to have power to administer oaths (s. 125); and the judge may appoint commissioners for that purpose (s. 126).

The *Mode of Proceeding* to obtain probate or administration has been altered, for the purpose of including applications to the district registrar.

The will, and a copy, are to be left at the Testamentary Office, or with a district registrar, as the case may be, with such affidavits as are requisite, according to the forms given in the schedules to the act.

In the case of an application to a district registrar any question arising in the transaction of common form business, may be referred to the principal registrar for the directions of the judge (s. 42).

But no probate or administration is to be granted through a district office, unless the deceased had a fixed place of abode in the district and the personal estate does not exceed £1,500 (s. 43). And it is not obligatory to apply to a district office (s. 45).

A note of the probate and a copy of the will or of the administration is to be sent by the district registrar to the principal registrar (s. 46).

Probate and other official copies of wills or administrations are to be printed under the directions of the principal registrar, and printed copies sent to the Metropolitan Register Office of births and deaths; the Prerogative Office in Dublin; the Commissary in Edinburgh; the clerk of the county court in the district where the deceased died, &c. (ss. 47, 48.)

These printed copies may be inspected for a fee of 6d., and printed official copies may be obtained, or official extracts (ss. 50, 52).

Provisions are made as to the time of proving wills and rendering inventories, &c. (ss. 53, 56). And for entering caveats, and as to proceedings to establish wills (ss. 58, 65).

The court is empowered to appoint a representative of real estate (ss. 67, 73). And the powers of such representatives are defined (ss. 74, 82). Power is also given to appoint administrators (ss. 90, 96).

*Appeals* are to lie from the Probate Court to the Lords Justices, and thence to the House of Lords; or to the House of Lords in the first instance (s. 38).

The *Trial of Issues* on questions of fact arising in suits in the Probate Court, may be directed to take place before itself by a special or common jury, or before any judge of assize (ss. 100, 104).

*Jurisdiction of the County Courts.* If the personal property be under £200, the county court of the district where the deceased died may decide all disputed questions. So where the real and personal property is under £300 (ss. 105, 106). And the clerk of the county court is to transmit to the registrar a certificate of the decision of the county court (s. 107).

The *Fees* of the court are to be regulated by the Lord Chancellor, and to be paid by stamps (ss. 131, 134, 137).

The *Salaries* are specified in Schedule F., viz. :—

Principal Registrar, £2,500;  
Three Registrars, each £1,500;  
Sixty District Registrars, each £500;  
Ten Official Proctors, each £800.

*Compensations* to the judges and officers of the abolished courts appear to be most amply provided; and the *advocates* of Doctors Commons may practise not only in the Probate Court but in all the superior courts.

The compensation to the *Proctors* is to be estimated by the Lords of the Treasury, and annuities granted equal to one half the net profits of each proctor in respect of testamentary causes and matters, founded on the average of five years immediately preceding the commencement of the act (ss. 145, 146).

And, as before stated, the proctors are to be entitled to admission within twelve months in all the superior courts as solicitors and attorneys.

Such are the proposed enactments in the amended bill, and we are assured there is every probability that it will be passed; yet we are now in the first week in July, and it is rumoured that the session will close before the end of the month. The measure has yet to pass through all its stages in the Upper House. If, however, the compensations have been accepted, and a satisfactory compromise

made with the former opponents of the reform, there is time in two or three weeks to steer to the haven of royal assent.

The preceding statement will have shewn several of the last alterations made in the Solicitor-General's Bill; and we subjoin the following notes, more particularly calling attention to the new clauses :—

Section 28 establishes *DISTRICT testamentary offices* in the circuits of the county court judges, and provides a distinct registrar, clerks, messenger, &c.

Section 39 enacts that, persons desirous of proving a will or obtaining administration must apply personally or *through a solicitor* at the Testamentary Office, and leave the will and also a copy, with an affidavit, according to the form in schedule C. But where the application is made to a *district registrar* the person applying may employ a solicitor or agent.\*

The district registrar is to administer oaths; and by the 40th section he is directed to transmit to the principal registrar the original will, affidavit, and other papers, and the principal registrar shall thereupon cause probate, &c. to issue, and forward the same to the district registrar, with such number of printed official copies as shall be required.

The district registrar is then to enter the probate or a note of the administration in a "district search book."

The registrar or district registrar is then to deliver or transmit a probate through the post to the person applying as his *solicitor*.†

But no probate or administration, according to section 43, can be granted in a district office, unless the intestate or testator had a *fixed place of abode* within the district, and unless the *personal*‡ estate does not exceed £1,500.

The 45th section gives the option of applying either to testamentary or the district office.

Then the 46th section enacts, that a copy of the will or note of administration is to be sent to the registrar, monthly, by the district registrar of wills and administrations granted during the preceding month.§

The *jurisdiction of county courts* is provided by the 105th section, where the personal property is under £200, in which case the county courts may decide all *disputed questions*. So by the 106th section, where the real and personal estate is under £300, the judge of the county court is to have the *same jurisdiction as the court of probate*.|| Section 107 directs the clerk of the county court to transmit to the registrar a certificate of the decree for the grant or revocation of probate.

\* It should be made clear that an attorney or solicitor only can act, where the party does not apply personally.

† Here the party or his solicitor (not an agent) can alone transact the business.

‡ As there will be a probate of real as well as personal property, the real should be included,—both not exceeding £1,500.

§ The 46th clause seems inconsistent with the 40th, which provides for the transmission of the will, &c. to the registrar at the testamentary office, in order to obtain probate. The 46th clause assumes the grant to be made at the district office.

|| It does not appear why this clause varies in the power conferred from the previous one.

# **NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.**

## **PAWNBROKERS.**

19 and 20 Vict. c. 27.

The preamble recites 25 Geo. 3, c. 48; 55 Geo. 3, c. 184; 39 & 40 Geo. 3, c. 99. Persons herein described deemed to be pawnbrokers; penalty on persons declared or deemed to be pawnbrokers not taking out proper licences; penalties recoverable by summary information; power to justices to mitigate penalties.

The following are the title, preamble, and sections:—

An act to amend the acts relating to pawnbrokers.

[June 23, 1856.]

Whereas under and by virtue of an act passed in the twenty-fifth year of the reign of King George the Third, chapter forty-eight, all persons using or exercising the trade or business of a pawnbroker in Great Britain are required to take out a licence annually for that purpose in the manner prescribed by the said act, under the penalty of fifty pounds for any neglect in that behalf; and such licences are chargeable with certain stamp duties granted and imposed thereon by an act passed in the fifty-fifth year of the said king's reign, chapter one hundred and eighty-four: And whereas an act was passed in the thirty-ninth and fortieth years of the said king's reign, chapter ninety-nine, for better regulating the business of pawnbrokers: And whereas attempts are made to evade the provisions of the said acts by persons who receive goods and chattels into their possession, and advance money thereon, under the pretence that the transaction is a sale and purchase of such goods and chattels, and not a receiving or taking of the same by way of pawn or pledge; and it is expedient to amend the said acts with a view to prevent such evasions and the mischiefs arising therefrom: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The following shall be deemed to be persons using and exercising the trade and business of a pawnbroker within the meaning of the several acts aforesaid, and subject and liable to all the provisions and regulations thereof in relation to pawnbrokers, as well as the persons who by or under the said acts or any of them are declared or deemed to be persons using or exercising the said trade or business; (that is to say) every person who shall keep a house, shop, or other place for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and shall purchase or receive or take in any goods or chattels, and pay or advance or lend thereon any sum of money not exceeding ten pounds, with or under any agreement or understanding, express or implied, or which from the nature or character of the dealing may reasonably be inferred, that such goods or chattels may be afterwards redeemed or repurchased on any terms whatever.

2. If any person by or under this act or the several acts aforesaid or any of them declared or deemed to be a person using and exercising the trade or business of a pawnbroker shall neglect or omit to take out the proper licence in that behalf he shall

forfeit the sum of fifty pounds, which shall be recoverable by information before any justice of the peace in the name of an officer of inland revenue prosecuting for the same on behalf of her Majesty; and in every information or other proceeding for the recovery of such penalty it shall be a sufficient description of the offence to charge that the defendant did use and exercise the trade and business of a pawnbroker without taking out a proper licence in that behalf; and upon the conviction of such defendant the like proceedings shall be had for the levying of the penalty or for the recording of such conviction, and for the appeal of the defendant if he shall feel himself aggrieved thereby, as are provided by law, and may be adopted with regard to any penalty incurred under the said act of the thirty-ninth and fortieth years of King George the Third: Provided always, that it shall be lawful for the justice before whom any such defendant shall be convicted to mitigate or lessen the said penalty, if he shall think fit, to any sum not less than one-fourth thereof; provided also, that any proceeding authorized or directed by the said recited acts or this act to take place before a justice of the peace may, in Scotland, take place before the sheriff of the county in which the proceeding is instituted, or his substitute; but no appeal shall lie from the judgment of any sheriff to the quarter sessions of the peace, nor shall any other appeal lie, save from the judgment of the sheriff substitute to the sheriff, whose decision shall in all cases be final, and not subject to review.

## **PUBLIC HEALTH SUPPLEMENTAL ACT.**

19 & 20 Vict. c. 26.

Certain provisional orders of the General Board of Health confirmed; power for Halifax local board to raise money for purchasing gasworks; first election of local board of Waterloo with Seaforth; constitution of West Ham local board of health; first election of local board of West Ham; first election of local board of Sowerby Bridge; first election of local board of Moss-side; act incorporated with 11 & 12 Vict. c. 68; short title.

The following are the title, preamble, and sections of this act:—

An act to confirm provisional orders of the General Board of Health applying the Public Health Act, 1848, to the districts of Waterloo with Seaforth, West Ham, Sowerby Bridge, and Moss-side; for alteration of the boundaries of the districts of Rusholme and Bishop Auckland; and for other purposes.

[June 23, 1856.]

Whereas the General Board of Health have, in pursuance of the Public Health Act, 1848, made, published, and deposited, according to the provisions of that act, certain provisional orders in the schedule to this act contained, and it is expedient that the said orders should be confirmed, and further provisions made in relation thereto: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That—

1. The provisional orders of the General Board of Health contained in the schedule hereunto annexed shall, from and after the passing of this act, so far as the same are authorised by the said Public Health Act, be absolute, and be as binding, and of the like

force and effect, as if the provisions of the same had been expressly enacted in this act.

2. Whereas by the Halifax Gas Act, 1855, the local board of health for the district of the borough of Halifax having, under an act of the fourth year of George the Fourth therein recited, power to light with gas the streets within the district, were authorised and required to purchase the undertaking of the Halifax Gaslight and Coke Company, and it is expedient that the local board be authorised to raise the money required for the purchase: Therefore the local board may, with the approval of the General Board of Health, borrow on mortgage of the gasworks, and the income therefrom, and the general district rates for their district or any of them, the money required for the purchase of the gasworks, and any necessary extensions thereof, and from time to time may re-borrow such part thereof as is not paid off by means of a sinking fund; and for the purposes of this enactment the clauses "with respect to mortgages to be executed by the commissioners" of the Commissioners Clauses Act, 1847, are incorporated with this act.

3. The first election of the local board of health for the district of Waterloo with Seaforth, for the purposes of the said Public Health Act, shall take place on the thirtieth day of July in the year of our Lord one thousand eight hundred and fifty-six.

4. Three of the members of the local board of health for the district of West Ham, to be constituted in pursuance of the West Ham provisional order set forth in the schedule to this act, and of this act, shall from time to time be delegated by the court of commissioners of sewers for the Dagenham and Havering levels; and the twelve remaining members of the said board shall be elected for the whole of the said district of West Ham by the owners of and ratepayers in respect of property in the said district.

5. The first election of the local board of health for the district of West Ham, for the purposes of the said Public Health Act, shall take place on the fifth day of August in the year of our Lord one thousand eight hundred and fifty-six.

6. The first election of the local board of health for the district of Sowerby Bridge, for the purposes of the said Public Health Act, shall take place on the thirtieth day of July in the year of our Lord one thousand eight hundred and fifty-six.

7. The first election of the local board of health for the district of Moss-side, for the purposes of the said Public Health Act, shall take place on the thirtieth day of July in the year of our Lord one thousand eight hundred and fifty-six.

8. This act shall be deemed to be incorporated with the Public Health Act, and shall be as if this act and the Public Health Act, 1848, were one act.

9. In citing this act in any other act of Parliament, or in any proceeding, instrument, or document whatsoever, it shall be sufficient to use the words and figures "The Public Health Supplemental Act, 1856."

## ORDERS IN COUNCIL.

### ALTERATIONS IN THE COUNTY COURTS DISTRICTS.

It has been ordered by her Majesty in Council, that from and after the 31st day of August, 1856, the following alterations be made in the County Court districts, viz. :—

That the parishes of Harlington, Eversholt, Ridgmont, and Tingrith, now in the district of the

County Court of Bedfordshire, holden at Leighton Buzzard, shall be in the district of the County Court of Bedfordshire, holden at Amptill.

The parish of Norton Canes, now in the district of the County Court of Staffordshire, holden at Wolverhampton, shall be in the district of the County Court of Staffordshire, holden at Walsall.

The parishes of Coleshill and Sheldon, now in the district of the County Court of Warwickshire, holden at Birmingham, shall be in the district of the County Court of Warwickshire, holden at Solihull.

The parishes of Over Whitacre and Shustoke, now in the district of the County Court of Warwickshire, holden at Birmingham, shall be in the district of the County Court of Warwickshire, holden at Atherstone.

The parishes of Holme, next Runcton, Totterhill, Wormegay, Watlington, and Wiggenhall St. Peter's, now in the district of the County Court of Norfolk, holden at King's Lynn, shall be in the district of the County Court of Norfolk, holden at Downham market. From the *London Gazette* of 27th June.

### EXTENSION OF THE BILLS OF EXCHANGE ACT, 1855, TO STANNARIES COURT OF RECORD.

It is ordered by her Majesty in Council, that, within one month after such order shall have been made and published in the *London Gazette*, all the provisions of the "Summary Procedure on Bills of Exchange Act, 1855," shall be extended and applied to the Court of Record, called the Court of the Vice Warden of the Stannaries (established under the provisions of an Act passed in the session of Parliament, held in the sixth and seventh years of the reign of King William the 4th., chap. 106, and extended into Devonshire, by another Act passed in the session holden in the eighteenth and nineteenth years of the reign of her present Majesty, chap. 83, in respect of actions upon bills of exchange and promissory notes.

And it was further directed that the powers and duties incident to the provisions of the said "Summary Procedure on Bills of Exchange Act, 1855," with respect to matters in the said Court of Record, shall and may be exercised by the Vice Warden, or his deputy for the time being; or in their absence by the Registrar, or one of the Registrars, for the time being of the said court; and that for this purpose the forms of proceeding by plaint, and by writ of summons used in the said court, shall be made conformable, as near as may be, to the forms contained in the schedules to the said last-recited Act annexed, and the sum to be fixed for costs under the said Act, should be fixed by the Vice-Warden. From the *London Gazette* of 27th June.

## LAW OF DIVORCE.

### REPORT OF THE SELECT COMMITTEE.

THE Select Committee of the House of Lords on the Divorce and Matrimonial Causes Bill, and on the Law and practice of divorce, have just made their report to the House, from which we extract the following as the result of their deliberations.

That when a wife lives apart from her husband, under a decree of separation *a mensa et thoro* obtained at her suit, all property which she shall afterwards acquire by her own exertions, by bequest gift, or otherwise, shall be held by her to her separate use.

That, under the same circumstances, she shall have power to contract, to sue and be sued as a *feme sole*; and her husband shall not be liable in respect of her engagements, or for any costs that she may incur either as plaintiff or defendant, or in any other manner.

That a divorce *à vinculo matrimonii* may be decreed in all cases of adultery committed by the wife, and in all the following cases of adultery committed by the husband:—

Adultery accompanied with cruelty, such cruelty as would be a just ground for a divorce *à mens et thoro*.

Incestuous adultery.

Bigamy.

Adultery, with wilful desertion for four years.

That there shall be an appeal from the judge ordinary to the full court.

That there shall be an appeal in cases of divorce *à vinculo matrimonii* to the House of Lords, but only on matters of law.

The committee therefore recommend that such alterations should be made in the bill as will give effect to these resolutions.

It was proposed to abolish the action for damages in cases of adultery, or to substitute for it a criminal prosecution in the temporal courts against the adulterer, or against both the offenders, the punishment to be by fine and imprisonment; but these proposals were negatived by the committee, though in each case by a small majority.

The committee submit that alterations should be made in the bill in respect of the composition of the court of divorce, by adding thereto, the Chief Justice of the Court of Common Pleas and the Chief Baron of the Court of Exchequer, and substituting the Dean of the Arches for the judge of probate and administration, and that any three of the judges, of whom the Dean of the Arches should be one, should make a quorum.

## JUDICIAL AND OFFICIAL SALARIES.

### SALARIES OF COUNTY COURT JUDGES AND CHANCERY OFFICERS COMPARED.

THE frequent debates in Parliament regarding the salaries of the county court judges, and the leading articles in the daily newspapers, show that the *Sexagint* (slightly to paraphrase Lord Brougham's name of the old bankruptcy commissioners) have many friends both in the third and so-called fourth estates of the realm. Before the "Small Debts" Act of 1846, the business of the small debt courts, whose jurisdiction extended to £5, in many places to £10, and in some to £15, was conducted by attorneys as clerks of the court, or assessors to the jury of commissioners. Their emoluments depended on the extent of the business of the court, and averaged, at the most, £500 a-year, some receiving more, but generally less than that amount. These gentlemen, who were fully competent to the discharge of their duties, were superseded by the revival of the county courts, and barristers were appointed in their stead, whose salaries it was stated would be limited to £1,000 a-year. They were, at first paid by fees, and in some populous districts,

they received £2,000, or £3,000; whilst, on some circuits the fees fell far short of £1,000.

Then came the question of a fixed salary, and its amount was left to be regulated by the commissioners of the treasury, and £1,000 a year was the usual sum allowed. Whilst the jurisdiction of the courts was limited, according to the title of the act to "Small Debts" not exceeding £20, the salary might fairly be limited to £1,000 a year; and probably the judges themselves did not expect an increase until the jurisdiction should be extended. Then, year after year, bills were introduced to Parliament to enlarge the jurisdiction to £50, concurrently with the superior courts, and to delegate to the county courts (as they were called instead of small debt courts) matters which had exclusively belonged to the superior courts. Numerous petitions were presented to Parliament, and the newspapers abounded in praises of the manner in which the judges discharged their duties, and reiterations of the popular feeling in their favour. The sixty judges and sixty clerks, and hundreds of assistant clerks, with influential treasurers, succeeded in inducing the legislature to enlarge their jurisdiction as to amount, and confide to them matters relating to charitable trusts and other judicial or ministerial duties to a limited extent.

The county courts are now, therefore, very different tribunals from their first constitution; and we are not prepared to say that a larger salary than formerly ought not to be allowed for the judge's increased labour. The bill before Parliament proposes that the judges' salaries should be paid out of the Consolidated Fund, making, in the whole, £90,000 a year. The question with the guardians of the public purse is now rather different than when the salaries were to be paid out of the fee fund.

The *Sexagint* are still ably supported by their friends of the press. One of them, a writer in *The Daily News*, differing in opinion from the Lord Chancellor in his refusal to increase the salaries from £1,200 to £1,500, has made a severe onslaught upon the amount of salaries paid to the officers of the Court of Chancery. He forgets, however, that all the salaries of those officers have been very largely reduced in recent times. For instance, the Lord Chancellor had an income arising from fees, varying from £20,000 to £30,000 a year. The present Lord Chancellor has only £10,000, and of which £4,000 belongs to him as Speaker of the House of Lords. The Masters in Chancery, from fees and copy money, had each not less than £4,000 a year; and the chief Registrar about the same. The Masters were reduced to £2,500; the senior Registrar to £2,000; and others to different amounts, down to £1,250. Some of the clerks in court, who were the taxing officers, received in fees from £5,000 to £10,000 a year. The present taxing Masters receive £2,000. The Masters' chief clerks used to receive about £2,000 a year; they were reduced to

£1,000; and the judge's chief clerks, who now perform all the duties of Masters in Chancery, till lately, received £1,200, and now £1,500.

Then look at the common law courts: the chief clerk's emoluments were about £10,000. The present Earl of Ellenborough, who was appointed to that office by his father, then the Lord Chief Justice of England, has a pension estimated on that amount. Then the masters, prothonotaries, secondaries, clerks of rules, and clerks of all kinds of proceedings, filazers, &c., &c.—all these have been reformed, reduced, and many altogether abolished. The present masters as chief officers of the court, next to the judges, receive only £1,200 a year. If comparisons are to be made between the official duties of the registrars, taxing masters, chief clerks of judges, and clerks of records in chancery, and those of the officers of other courts, we must confess that the common law masters have some reason to complain, for they are limited to £1,200 a year. They attend the court like the registrars, they tax costs like the taxing masters, and they examine witnesses, sit on references, and make special reports.

The writer in the *Daily News* says:—

"At the risk of disturbing, in an exceedingly rude and troublesome way, the modest leisure of a very retiring and no doubt very meritorious set of public functionaries, we positively must suggest a few queries, and venture a few comments on the recently published 'Annual Account of the Accountant-General in Chancery.' We are not sure whether this somewhat remarkable document might not have escaped our attention, had it not been for the recent declaration of Lord Cranworth against raising the salaries of the County Court Judges from twelve to fifteen hundred a year. As our readers may remember, we had the misfortune to differ from the Lord Chancellor on that occasion, and to show cause for coming to the conclusion that whether tested by the amount of work done, the *dignity and responsibility of the position*, or the official emoluments of other judicial functionaries—the larger salary was not a farthing too high. But although differing as to the application of the principle to the particular case, we of course saw much to admire in the rectitude and propriety with which the head of the law opposed what he conceived to be an excessive rate of remuneration to its subordinate administrators. It was, therefore, with some little curiosity that we returned to the paper now lying before us, in order to ascertain how far the principles of a just economy are exemplified in the salaries of the various functionaries connected with the administration of the Court of Chancery.

"In endeavouring to communicate a few of the results of the investigation, we desire to be understood as speaking with a proper amount of doubt and hesitation. We know it is rash to apply the rules of plain sense and common arithmetic to matters which were never meant to be tried by tests so vulgar. We must, however, do the best we can, and mention the following as a few of the points on which we think some little explanation might not improperly be asked for.

"The first item that meets us is, 'Nine Masters' salaries at £2,500 per annum, £21,145 16s. 8d." We say nothing of this: we are aware that though

only five of these nine Masters are at work, yet they are all on full pay, having been abolished on those express and economical conditions.

"Two Chief Clerks to Masters' receive, we observe, as 'compensation' £1,879 8s. 4d. (there is a delightful precision throughout in the shillings and pence); but, as this is stated to be under the 15 & 16 Vict. c. 80, we suppose it is all right.

"Pensions to three retired Registrars' are next put down at £4,048 3s. 2d., a total which (omitting the shillings and pence) gives each 'retired Registrar' a snug little life annuity of £1,349 a year. A 'registrar's bag bearer' is also on the retired list, and receives in requital of past services in his somewhat Judas-like office a modest income of £183 4s. 6d. per annum.

"Passing from the retired, to the active, officers, and taking no note by the way of such small *deers* as 'a Serjeant at Arms,' at £579 8s. per annum, and a crowd of 'Trainbearers,' and 'Persons to keep order,' at proportionate amounts, we pause before an item which, to the lay understanding, seems more than ordinarily obscure: 'Solicitor to the Suitors, in lieu of costs, £1,200.' In our uninstructed fashion we had always been accustomed to think of costs and solicitors as inseparable, and are glad to find that the rule seems to admit of exceptions.

"The next entry that catches our eye is clear enough; but is it not, according to the Chancellor's standard, a little high? 'Salaries to eight Chief Clerks to the Master of the Rolls and the Vice-Chancellor's, £9,900,' that is, if our arithmetic be correct, £1,287 10s. a year a piece. Turning to the act (15 & 16 Vic. c. 80) we find that these gentlemen, whose functions are principally ministerial, and whose qualification consists in ten years' practice as attorneys and solicitors, are entitled to a salary of £1,200 a year, with power to the Chancellor to increase it to £1,500.

"Here we seem to get a very close approximation to the Chancellor's estimate of a County Court Judge. He thinks him worth the minimum salary awarded to the Chief Clerk of a Vice-Chancellor. My Lord Campbell lately took occasion to observe of an aspiring County Court Judge that he considered himself qualified to act as Chief Justice of England! It may be well for that gentleman to understand that his tariff with the Chancellor is that of a Chief Clerk in Chancery. But to proceed. There are five masters in Chancery who are still in a state of official vitality; these five masters have each a clerk—hence, we suppose, the next charge in the list, 'salaries to five masters' chief clerks, at £1,000 each £5,000.'

"We come next to the Registrars—'Salaries to eleven registrars, £17,116 17s.' or, discarding shillings again, £1,556 to each. Now, it may be very invidious and improper; but we really cannot refrain from asking, what is the nature of the duties in return for which each registrar is allowed, without comment, to draw a salary which Lord Cranworth believes to be too high for a county court judge? Unless we are misinformed (and to suppose that we are so would really be only affectation), these duties are of the very simplest and most mechanical description. The most onerous and responsible part of their functions consists in taking down verbatim the decrees which fall from the lips of the judicial oracle beneath whom they sit, or at the outside, of drawing out in a correct and methodical form the notes or heads of such decrees. Any properly trained clerk would be fully competent to execute this work,

and would be overpaid for doing it, at £500. a year. Such, however, is not the scale of the Court of Chancery; the clerks of these fortunate gentlemen receive more than the outside of the utmost remuneration that ought in fairness to be awarded to their masters, and are down in the account before us for no less a sum than £6,894 14s. 9d. per annum.

"Next to the Registrars in order, but above them in dignity and emoluments, come those important functionaries, the 'taxing Masters.' There are six of them, and their collective annual cost to the 'suits' fee fund' (for all these salaries, be it understood, are charged either on the 'suits' fund or the 'suits' fee fund) is £12,000 sterling a year, or £2,000 a piece. This is not all. Some of these gentlemen are also, we believe, in addition to their official £2,000 per annum as taxing Masters, in the receipt of compensation as 'sworn clerks,' of the recently abolished 'six clerks office,' amounting to sums larger than their salaries as taxing Masters.

But taking them at £2,000 a year, let us ask whether, according to the Chancellor's standard, they are over or under paid? Their principal duties are sufficiently indicated by their official title; they are mainly occupied in the purely ministerial and routine duty of taxing, that is, assessing, solicitors' bills of costs. This may not be a pleasing duty. It, no doubt, lacks variety and excitement; it affords little scope to the energies of the intellect, or the play of the fancy; but we are not in the regions of sentimentalism. The sole question is, whether the work, such as it is, might not be quite as competently done for a fourth, or, at the outside, for a half of the money. We have no doubt it might, and better too. The fact is, you employ superior men (as some at least of these taxing Masters are) in routine drudgery, they loiter over an occupation in which they feel no interest, and soon fall into arrears, which inferior and more mechanical persons would avoid. Unless we are very much mis-informed, complaints of this kind are by no means infrequent with reference to the present state of the business in the office of taxing Masters."

It is evident from many of these remarks that the writer is unacquainted with the various and important duties which these officers have to perform, and the extensive knowledge they must possess of the rules of equity and the practice of the court. The chancery commissioners in their last report have devoted a large space to the duties of the registrars and their clerks, and have given in the appendix the voluminous evidence taken before them regarding that department of official business. "Comparisons are odious," or it might be asked whether in ninety-nine cases out of every hundred, the clerk of the county court could not as well, or better, perform the duty of the judge in ascertaining the amount of the petty claims in question, and fixing the times for payment of the several instalments?

It is proper also to observe that in the Court of Chancery the several officers have the charge of an enormous amount of property. There is, we believe, at the present time not less than sixty millions of money in court, and we are informed that on the average seven millions are paid into court, and about the same amount paid out. In such vast transactions there should be no niggardly apportionment

of remuneration. The officers should be placed above temptation, and the salaries should be such as will secure the faithful services of men of respectable station in society.

## ACCOUNTANT-GENERAL'S OFFICE.

### TIME OF CLOSING FOR THE VACATION.

WHEREAS it is proper that the accounts kept by the Accountant-General of this Court should be examined and compared in order to settle the same; and whereas it will require considerable time to perfect such examination, and it is necessary that a time should be appointed for closing the books of accounts of the said Accountant-General for the purposes aforesaid, I do order, that the books of the said Accountant-General be closed from and after Wednesday, the Twentieth day of August next to Tuesday the Twenty-eight day of October next, inclusive, excepting upon the days and for the purposes hereinafter mentioned, in order to adjust the accounts of the suits with the books kept at the bank; and that during that time no draft for any money except as hereinafter provided, or certificate for any effects under the care and direction of this Court, be signed or delivered out by the said Accountant-General, or any stocks or annuities accepted or transferred by him relating to the suits of this Court. And that no purchase, sale, or transfer be made by the said Accountant-General, unless the order, request, or Registrar's certificate be left at his office, on or before Monday the Eleventh day of August next. And that no order for payment of any money out of Court, which may be then in Court, be received at the Accountant-General's office after Wednesday the Thirtieth day of August next. Provided, nevertheless, that the office of the said Accountant-General shall be open on Wednesday the fifteenth, Thursday the sixteenth, and Friday the seventeenth days of October next, for the delivery out of any regular interest drafts, which have become payable in respect of the October dividends, and of any other regular interest drafts which shall have become payable during the closing of the office as aforesaid. And to the end that the suits may have notice hereof and apply to the Court, as there shall be occasion, to have money paid to them out of the bank, or stocks, or annuities transferred to them before the said Twentieth day of August next, I do order that this Order be affixed up in the several offices of this Court.

CRANWORTH, C.

June 25th, 1856.

## CITY OF LONDON SMALL DEBTS ACT.

### EXCLUSIVE JURISDICTION TO £50.

It is not generally known, or remembered, that if a debtor reside within the imaginary walls of the city of London, he cannot be sued in the superior courts, unless the debt be more than £50, under the penalty of recovering the debt only, and no costs. A creditor, on the west side of Temple Bar, cannot employ his attorney to sue a debtor for £50, except in the city small debts court, if such debtor reside on the east side of the Bar. So that the law, within the city of London, as to the extent of jurisdiction, differs from the whole of the rest of the kingdom. This extraordinary result arises from the conflict of



two sections in the city small debts act, the one limiting the concurrent jurisdiction of the superior courts to £20, and the other to £50. The city of London act is a local act; and it is singular that the general jurisdiction of the superior courts, in actions from £20 to £50, should be ousted by this local act; but so it appears to be; for the Court of Common Pleas has decided that, if the plaintiff in an action on contract in the superior courts, for which a plaintiff might have been entered in the local courts, recover not more than £50, a suggestion may be entered to deprive him of costs.

Considering the importance of the question, and the opportunity now afforded of amending what never could have been intended by the legislature, we subjoin an abstract of the report of the decision in the case of *Castrigues v. Page*, 13 Com. B. 458.

This was an action by the indorsee against the indorser of a bill of exchange. It appeared that the plaintiff dwelt at No. 844, Regent-street, and the defendant at No. 14, John-street, Minorities, in the city of London. The plaintiff having obtained a verdict for £27 14s., the defendant moved to enter a suggestion to deprive him of costs, under the 15 & 16 Vict. c. 77, s. 119 (City of London Small Debts Extension Act, 1852).

This section enacts that, "if any action shall be commenced, after the commencement of this act, in any of her Majesty's superior courts of record, for any cause other than those lastly hereinafter specified, for which a plaintiff might have been entered in the court, holden under the provisions of this act, and a verdict shall be found for the plaintiff, for a sum not more than £50; if the said action is founded on contract, or less than £5, if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and, if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify, on the back of the record, that the action was fit to be brought in a superior court."

The 120th section provides that, "if in any action commenced after the passing of this act, in any of her Majesty's superior courts of record, in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum less than £20; or if in any action commenced after the passing of this act, in any of her Majesty's superior courts of record, in trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum less than £5; the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases hereinafter provided, and except in the case of a judgment by default; and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs; nor shall any such plaintiff be entitled to costs by reason of any privilege as attorney or officer of such court, or otherwise."

*Jervis, L. C. J.* said—"I am of opinion that a suggestion must be entered in this case. If we were at liberty to speculate as to what would be most conducive to the benefit of the public, and as to the reasons which induced the legislature to enact, as they have done, instead of endeavouring to put a

construction upon the words we find, much might be said in favour of the view which has been presented by Mr. Pulling; because one cannot well see why a different rule should prevail in the city of London, from that which applies to all other parts of the kingdom. When one sees that this statute was consequent upon those which were passed for the general improvement in the administration of the law, one would not have expected that those who had charge of the bill in its progress through the Houses of Parliament, would have committed so palpable a fraud upon the legislature. But so it is; and this act differs, in a very important particular, from the general county courts' acts. If the two provisions in question had been found in two separate acts of Parliament, applying what Mr. Justice Burton calls the golden rule of construction, to give to all the words of an act of Parliament their plain and ordinary meaning, unless such a construction leads to absurdity, or injustice, we might possibly have so altered the words as to avoid the absurdity and incongruity we find here. But seeing that there are two sections in the same act of Parliament, immediately following each other, which, although apparently conflicting, received the Royal Assent at the same moment, we are bound, if it be possible, to give effect to both. Now, the 119th section, in substance, provides, that if any act shall be commenced in a superior court, for which a plaintiff might have been entered in the court, holden under the provisions of that act, and a verdict shall be found for the plaintiff, for a sum not more than £50, if the action is founded on contract; or less than £5, if founded on tort, the plaintiff shall have judgment to recover such sum only, and no costs. Then comes the 120th section, which provides, that if any action commenced in a superior court, in covenant, debt, detinue, or assumpsit, not being an action for a breach of promise of marriage, the plaintiff shall recover a less sum than £20, or, if in trespass, trover, or case, not being an action for malicious prosecution, libel, &c., the plaintiff shall recover a less sum than £5; he shall have judgment to recover such sum only, and no costs, except where the presiding judge shall certify, and no suggestion shall be necessary. The result is, perhaps, absurd; but the two sections are not so inconsistent as to justify us in declining to put a construction upon one of them. Under sect. 119, in the cases provided, the plaintiff is to be deprived of his costs by means of a suggestion; under section 120, in certain events he loses his costs without the necessity of a suggestion. For these reasons, I think we are bound to allow the suggestion in this case."

*Cresswell, Williams, and Talfourd, J. J.*, concurred.

## SUGGESTED AMENDMENTS IN THE COUNTY COURTS BILL.

The 20th clause makes it necessary in certain cases for both parties to agree to county court to try action. As the clauses stand it would apply to all actions. It is suggested therefore that after the word "law" in line 28 of p. 5, to add—

*But at present exempted from the jurisdiction of county courts.\**

The 23rd clause gives the judges of the superior

\* The words and passages in italics are the suggested amendments, which we understand have been prepared by the Liverpool Law Society.

courts power to direct causes to be tried in the county court where the sum claimed does not exceed £50. It is suggested that this should only be in actions involving questions of account, adopting the principle of the 3rd section of the Common Law Procedure Act, 1854, and that both parties should be heard before any order is made. After the word "May" in line 8, p. 6, add—

*Issue a rule or summons to shew cause, and on the hearing of such rule or summons if it shall appear that the matter in dispute consists wholly or in part of matters of mere account.*

The 25th clause enacts that plaintiffs shall have judgment by default in the county court, in cases above £20, unless defendant gives notice of his intention to defend, but the judgment is not to be available until after the return of the summons. It is submitted that the notice of defence should be given in all cases of £10 and upwards, and that the judgment should be entered up, on the return day of the summons, as confusion would arise if this were not so. In line 21 of page 6, instead of the *the word twenty read "Ten,"* and in lines 29 and 30 omit the words—"or within one month after."

The 27th clause proposes to abolish costs on judgments by default in the superior courts in actions not exceeding £20. It is suggested that judgments by default should in all cases remain as at present. The expense is less, according to the scale now in force in the county courts, and will not be greater than the proposed scale. The remedy is quicker, as judgment and execution are obtained in 17 days, whereas in the county courts it takes a much longer time—the average in large towns being a month. Sutors will always avail themselves of the cheapest and best remedies for recovering their debts and they may safely be left to select the tribunal for themselves, if county courts are preferable they will be resorted to; and it is respectfully submitted, that to force creditors into these courts, is inconsistent with the principle of giving facilities for the recovery of debts. There is another reason, the effect of this clause would be to deprive the inhabitants of Liverpool and other large towns, of the advantage of the summary proceedings on Bills of Exchange Act, which gives a plaintiff judgment after twelve days, whereas if he be driven to the county court, though such courts in Liverpool and some other places, sit *de die in diem*, a plaintiff could not get his cause heard under a month, and as there are thousands of bills of exchange and promissory notes made in large towns under £20, the effect of this clause would be to deprive suitors of the advantage of this admirable bill. This clause should therefore be struck out.

The 32nd and 33rd clauses forbid the recovery of any costs as between attorney and client, unless the latter signs a consent to pay them. This would be a great grievance to the profession, and in many cases work a positive injustice to the suitor. It would be humiliating and offensive to an attorney to ask his client to sign a written paper that he will pay, and the client would in many cases, deem it an insult; yet it would be unjust that the attorney should have no remedy for his proper charges. There are multitudes of cases under £20 on which both professional skill and labour are required, and it is submitted that the interests of both suitor and solicitor would be best served by the registrar of the court having the same power to deal with these charges as taxing officers have in other courts. The suitor would be loser by the proposed change, for the respectable portion of the profession would refuse

to conduct cases in these courts; therefore it is suggested that the words "*in writing*" in line 24, of p. 8, and the words "*by writing under the hand of the client,*" in the 87th and 88th lines of the same page should be omitted.

The 36th clause relates to the removal of causes from the county courts to the superior courts. It is very desirable that causes should not be removed by certiorari, without reasonable grounds being shewn; the plaintiff should therefore be heard against the application before the writ is allowed to issue. At present, causes are removed in the most arbitrary manner, and frequently at the last moment, even after plaintiff has gone to all the expense of preparing for trial. In many instances the plaintiff may not possess the means of following his adversary into a superior court, and the ends of justice are defeated by the removal. After the word "court" in line 28 of p. 9, add the words—

*Upon a rule or summons to shew cause.*

The 66th clause provides for appeals. It is submitted that the right of appeal should not be limited to actions exceeding £20, but should be extended to all cases, if the judge at the trial should permit, and certify that the case is a proper one for an appeal. It must be obvious, that in great mercantile communities, very nice questions of law frequently arise upon cases of comparatively small amount, and the case is brought into court, not for the mere purpose of obtaining the amount sought, but to establish a principle. This has frequently arisen in the county court held at Liverpool, and the judge has expressed his regret that he had not the power to grant an appeal. Many of the county court judges who gave evidence before the commissioners appointed to enquire into the practice of county courts, also expressed that such was their opinion. It is suggested that at the end of clause 66, there should be added words to this effect—

*And in all actions, whatever be the amount of debt or damage claimed, if the judge shall certify that the same is a fit and proper case for an appeal, and upon such terms as he may direct.*

## MERCANTILE LAW AMENDMENT BILL.

### PETITION OF MERCHANTS AND TRADERS OF THE CITY OF LONDON.

THIS petition urges the following objections to this bill:—

1. That the petitioners have learnt that it has been proposed to repeal the 17th section of the 29th Chas. II., cap. 8, whereby it was enacted "that no contract for the sale of any goods, wares, and merchandises for the price of £10 sterling or upwards shall be allowed to be good, except that the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorised." And the 7th section of the 9th Geo. 4, cap. 14, whereby the hereinbefore recited enactments were extended to "all contracts for the sale of goods of the value of £10 and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may

be requisite for the making or completing thereof, or rendering the same fit for delivery."

2. That the mercantile business of the City of London has grown up under, and has adapted itself to, the provisions of the act of Charles II.; and while the petitioners apprehend great risk and danger from a departure from this practice, they are unable to discover any advantage in the proposed alteration.

3. That the principle of the act of Charles II. was affirmed, and in some degree extended by an act passed in the year 1829 with general approbation, on the instance of the late Lord Tenterden, one of the most eminent commercial judges of modern times.

4. That the law imposes no unnecessary technicalities on contracts, they are required to be in writing, but may be in any form convenient to the parties, and are frequently effected by letters between the principals.

5. That in London a large part of the contracts are negotiated by brokers, and by the present practice all contracts entered into by a broker are sent to principals who are entitled to reject the same within twenty-four hours, if not in conformity with the intention of the parties.

6. That these provisions insure certainty, and give confidence in transactions in business, the importance of which can scarcely be appreciated.

7. That the petitioners conceive that, notwithstanding the proposed alteration of the law all contracts of importance will continue to be reduced to writing; but the petitioners will lose the protection the law now gives them.

8. That if the law shall be altered the petitioners may be called on at a lapse of many months to perform contracts of which they have no knowledge, arising out of misconception of those with whom they have been engaged in treaties, or of brokers or agents, to say nothing of the risk of fraud and collusion on the part of brokers and agents, the result of which must obviously be an increase of litigation and perjury.

9. That a large proportion of the contracts entered into contain stipulations as to the period of the arrival, of the shipment, or the delivery of goods, besides provisions as to their quality and price; and the value of the contract mainly depends on these details. That unless those stipulations are reduced to writing there can be no certainty that buyer and seller are agreed upon the contract they have entered into.

10. That the petitioners attach great value to the principle now acknowledged, that none but written contracts are valid in law. Those who choose to rely upon an honourable mutual understanding can now do so, but in practice it is rarely ever done, from a sense of its inconvenience. The measure now contemplated would not probably alter the practice of using written contracts, but would deprive the merchant of the security he now possesses in the knowledge that he is bound by no agreement which has not been accepted and revised by him, or which he has not had the opportunity of revising.

## LAW OF ATTORNEYS AND SOLICITORS.

### PAYMENT OF FUND TO SOLICITOR ON UNDERTAKING.

THIS was a petition for the payment out of court of some small sums to the solicitor, upon his undertaking to pay the same over to the parties entitled.

The *Master of the Rolls* said—"In this case, the order may be taken for the payment of these small sums to the solicitor, he undertaking to pay them over to the parties entitled. The usual practice is, to require a document signed by the parties to be produced, expressing their wish that the amount should be paid to their solicitor. In this case, eleven out of twelve have signed such a paper, and the twelfth is resident in America. Under these circumstances, I will dispense with the signature in this particular case, on the undertaking of the solicitor to pay the same over."

*Staines v. Giffard*, 20 Beav. 484.

## LAW OF COSTS.

### OF CO-TRUSTEES, WHERE ONE PLAINTIFF AND THE OTHER DEFENDANT.

A SUIT was instituted by one of two trustees of a settlement to recover a fund settled on the husband, wife, and children in succession; but which had been received by the husband and lent to his brother. The defendants were the other trustee (Mr. Addison), the husband (Mr. James Key), and wife.

The *Master of the Rolls* said—"I cannot give Mr. Addison his costs, because, on his own allegation, he is an innocent trustee; and if so, it was clearly his duty to have joined the plaintiff in compelling the restoration of this money for the benefit of their *cestui que trust*. I never allow an estate to be burdened with more than one set of costs, by the severance of two trustees, even if they appear as defendants, unless there is some very special reason for their so doing. If I gave him his costs, James Key would, in fact, have to pay them, because I should allow the plaintiff to add them to his own, and have them over against James Key. In my opinion, Mr. Addison ought to have joined as co-plaintiff, for the purpose of having the sum of money replaced by the husband, who, in fact, received it."

*Hughes v. Key*, 20 Beav. 895.

## POINTS IN EQUITY PRACTICE.

### REVIVOR AGAINST EXECUTOR OF EXECUTOR PENDING DECREE FOR ACCOUNT.

PENDING the inquiry under a decree for an account directed against an executor, he died, having appointed an executor.

On motion under the 15 & 16 Vict. c. 86, s. 52, the *Master of the Rolls* made an order against such executor to revive and carry on the accounts, and that he should admit assets of his testator or account.

*Cartwright v. Shephard* (No. 2), 20 Beav. 122.

### ABATEMENT BETWEEN HEARING AND DELIVERY OF JUDGMENT.

A CAUSE became abated between the hearing and the delivery of judgment by the court.

The *Master of the Rolls*, upon the authority of *Cumber v. Ware*, 1 Stra. 426, held that judgment could be delivered and the decree could be notwithstanding drawn up.

*Collinson v. Lister*, 20 Beav. 855.

SUPPLEMENTAL ORDER AGAINST INFANT CESTUI  
QUE TRUST BORN PENDING SUIT.

A DECREE was made in a suit to carry into effect the trusts of a settlement, and declaring the rights and directing inquiries and accounts. After the decree had been passed and entered, but before anything was done under it, it was discovered that an infant *cestui que trust* had been born just before the hearing, and who had not been made a party to the suit.

The *Master of the Rolls* on motion made a supplemental order, under the 15 & 16 Vict. c. 86, s. 52, to carry on the decree, upon its appearing to be for the infant's benefit, to be bound by the decree.

*Jebb v. Tugwell*, 20 Beav. 461.

METROPOLITAN AND PROVINCIAL  
LAW ASSOCIATION.

COUNTY COURT AMENDED BILL.

A PETITION has been presented by Mr. Hadfield, from this Association, for the alteration of some of the sections of the County Courts Bill, viz. :—

S. 5. The petitioners desire, with reference to this section, that attorneys and solicitors may not be excluded by positive enactment from the possibility of being appointed to the office of deputy judges of the county courts. Many attorneys and solicitors are to be found who, by their education, legal acquirements, and habits of business, are fitted to act as deputy judges of county courts. The petitioners, therefore, take this opportunity of drawing the attention of the house to the fact, that the two solicitors who were appointed county court judges, are not inferior to any in ability and efficiency, and command the confidence and respect of the public in their respective districts.

35. The petitioners ask that this section, which will effect a great saving of expense, may be extended to all actions, as well those under as those over £20. A plaintiff employing a solicitor to conduct his case under the impression that the defendant will oppose, is often disallowed the costs of his

solicitor against the defendant, when the cause turns out to be undefended.

The petitioners also desire to draw the attention of the house to the great hardship and injury which is inflicted, both on the public and the profession of an attorney, by the enactment now in force which prevents an attorney pleading in the county courts, as the agent of another attorney. Cases daily occur in which, from a pressure of business, or from the mere fact of two county courts sitting on the same day, or of the court being at a great distance from his place of business, an attorney is unable to attend personally to advocate a cause for his client, and if he be compelled either to incur the unnecessary expense of employing a barrister, or to decline the particular business, and risk the loss of his client, a hardship is inflicted upon the client or the attorney, or both. The restriction is not only injurious, but creates a different practice from that in existence in the superior courts. Attorneys act for each other in the superior courts in person, and conduct cases as agents before the judges, the masters, and the chief clerks.

The petitioners trust, therefore, that this hardship on attorney and client may not be continued, and that the bill may be amended by introducing a clause, permitting one attorney to act as advocate in the county courts as agent for another.

33. The petitioners venture to remonstrate against the scale of costs provided for by the 91st section of the 9 & 10 Vict. c. 95, and to point out that no respectable practitioner can work for such remuneration, and that any clause such as this, which deprives an attorney of reasonable remuneration, unless he has previously made a written bargain with his client, is most objectionable.

The petitioners pray that these objections may be taken into consideration, and that it may be borne in mind that it is essential to the well-being of the system of county courts that the remuneration to the practitioners should be reasonably sufficient that honourable practitioners may not hesitate to practice in them.

(Signed)

W. STRICKLAND COOKSON, *Chairman*.  
WILLIAM SHAKEN, *Secretary*.

CANDIDATES WHO PASSED THE EXAMINATION.

Trinity Term. 1856.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Adams, George Patten . . . . .	James White Adams.
Adderley, Charles . . . . .	Richard Heaton.
Ayre, Frederic Fearnley . . . . .	William Ayre; Charles Edward Ayre; Charles James Hampton.
Bedell, Benjamin . . . . .	Henry Cook.
Benbow, Edward . . . . .	Robert Acton Pardoe.
Boulton, James . . . . .	William James Boulton.
Britton, John James . . . . .	William Henry Reece.
Browning, James Bishop . . . . .	George Waugh Stable.
Brunskill, Jonathan Ward . . . . .	William Bleaymire; Thomas Johnston.
Buchanan, James . . . . .	Anthony Gilbert Jones.
Bullen, Thomas George . . . . .	George Debenham.
Burchell, James, jun. . . . .	William Burchell.
Butt, Richard . . . . .	Henry Rivington Hill.
Carrington, Charles . . . . .	Charles Fletcher Skirrow.
Caunter, Henry . . . . .	Bernard Anstis.
Chirm, Joseph . . . . .	William Morgan.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Clowes, Arthur Tallent	Edward Norris Clowes.
Cockle, Charles Moss	Charles Mathew Clode.
Collyer, Edward William	John Meadows White.
Cooper, George, jun.	Abram Bass; Thomas Rushton.
Cotton, Jesse Charles	William Taylor; David Gray.
Day, Edmund Stainton	Thomas Cooper.
Daw, Charles	George Hancock.
Farington, Henry Borron	Thomas Part.
Field, Henry George	Henry Underhill.
Fowkes, Henry Raper George	Charles Thomas Jenkinson.
Fowler, Frederick William	John Fowler; William Henry Trinder.
Fryer, Charles	James Richardson.
Fryer, Edward	William Daggett.
Fryer, Henry	William Gardiner.
Gole, Russell	James Gole.
Hall, John	James Winder.
Head, Robert William	Clement Henry Venn; Robert Thomas Head.
Heelis, Thomas	Stephen Heelis.
Hibbert, John, jun.	Joseph Hibbert.
Husband, William Henry	William Ley; Thomas John Reynolds.
Ingledeu, John Pybus	Henry Ingledeu; Yard Eastley.
Kilvert, John Minor	Richard Marston.
Kitching, George	Henry Copeman.
Lancaster, William	George Higham.
Ledger, Charles Frederick	Samuel Fozard Harrison.
Lewis, Thomas Tamplin	William Lewis.
Lyne, John Philip	Edward Hoblyn Pedler.
Monkhouse, Edward Newell	Cyrl John Monkhouse.
Morris, William Gillett	Thomas Morris; Philip William Newsam.
Mortimer, William Brooks	Thomas Lamb.
Mourliyan, Joseph Noakes, jun.	Joseph Noakes Mourliyan.
Nicholson, Stephen	Charles William Potts.
Norton, Bradbury	Silas Norton.
Pettingell, Joseph Williams	George Stamp; Herbert Archibald Gibson Mends.
Poncione, John Paul	William Haslam; George James Nicholson.
Prescott, Byam Martin	Thomas Abdy Fellowes.
Protheroe, William Price	Richard Greenway.
Quick, William	Thomas Weech Jones Forwood; Edward Weatherall, jun.
Richardson, Frank	Robert Robson Sadler.
Roberts, John Galloway	John Barlow.
Roberts, Thomas	John Holgate.
Rowell, Robert	William Heaton; Horace Vibart Mules.
Russell, Edward	George Edmunds Williams; Frederick Thos. Griffiths.
Salter, Thomas	George Salter; Charles Sabine.
Scott, John Henry	John Wilson; John Bridgea.
Sheldon, Joseph Edward	William Henry Duignan.
Sheppard, Frederick Clapton	Frederick Sampson William Sheppard.
Shoubridge, Harry	Charles John Shoubridge; Thos. Paterson Anderson.
Siddall, George Bentley	Thomas Constable.
Smith, Thomas David	Gerard Selby; George Wilson.
Stockwood, Thomas	William Lewis.
Thorold, George Coventry	John Hawkins.
Thorpe, Roby Liddington	Michael Browne.
Tucker, Charles	Edward Francis Slack.
Varty, Carleton	William Maychell; John Jameson.
Venn, William	John Alexander Mainley Pinniger; Edw. Clarke.
Warner, Powell	Edward Futvoye.
Watson, Ralph	Thomas Lewis.
Whitcombe, Henry Pennell	Deakin and Dent; John Walcot.
Wilkinson, William, B.A.	Dixon Robinson; Leonard Wilkinson.
Williams, Robert	John Parry Jones; Thomas Rogers.
Williams, Robert Lloyd	William Corne Humphreys.
Wilson, Joseph George	John Barber.
Wing, Henry Vincent	Edward Savage Bailey.
Wolferstan, Edward Pipe	George Paulson Wragge; Alfred Burton Cowdell.
Woodham, Thomas Burnett	Robert Withington Simonds; Thomas Woodham.
Wreford, Walter William	Robert Bishop.

## NOTES OF THE WEEK.

## OXFORD CIRCUIT.

The Judges have arranged that at Abingdon and Oxford both Courts should sit for the despatch of business on the commission day.

## NON-ATTENDANCE OF JURYMEN.

At the sittings at Nisi Prius at Westminster, before Lord Campbell, on the 21st instant, five jurymen were fined 40s. each for non-attendance.

## NEW MEMBERS OF PARLIAMENT.

The Honourable Dudley Francis Stewart Ryder, commonly called *Viscount Sandon*, for Lichfield, in the room of Henry Manners, Baron Waterpark, who has accepted the office of Steward of her Majesty's manor of Northstead, in the county of York.

*John Biggs, Esq.*, for Leicester, in the room of Richard Gardner, Esq., deceased.

## ELECTION OF CORONERS FOR THE COUNTY OF NORFOLK.

It has been ordered by her Majesty in council that in lieu of the town of King's Lynn, the parish or place of Gaywood, situate in the said Lynn district, in the county of Norfolk, shall be the place at which the courts for the election of coroners for the said district shall be holden.—From the *London Gazette* of June 27.

## LAW APPOINTMENTS.

The Queen has been graciously pleased to appoint *Richard Levinge Swift, Esq.*, Barrister-at-Law, now her Majesty's Consul at Buffalo, to be her Majesty's Consul at Riga.—From the *London Gazette*, of June 13.

We are informed that *J. Worlledge, Esq.*, Barrister-at-Law, will be the New Judge of the County Courts (Circuit No. 88), in the room of Francis King Eagle, Esq., deceased. Mr. Worlledge was called to the bar by the honourable society of the Middle Temple, the 23rd of November, 1888, and went to the Norfolk Circuit.

Mr. *William Woodman*, solicitor and town clerk of Morpeth, has been appointed treasurer of the County Courts of Northumberland and Durham.

*Charles Saunders, Esq.*, Recorder of Plymouth and Devonport, has been appointed judge of the county courts (circuit No. 57), in the room of Graham Willmore, Esq., deceased. Mr. Saunders was called to the Bar by the Hon. Society of Lincoln's-inn, on the 17th November, 1829, and went the Western Circuit.

*Thomas Frederick Kelly, Esq., L.L.D.*, was presented to the Queen at the levee last Wednesday, by Sir George Grey, on his appointment as the Judge of the High Court of Admiralty in Ireland.

## RESULT OF TRINITY TERM EXAMINATION.

At the examination of articulated clerks which took place on the 8th instant, ninety-three out of 114 completed their testimonials, and were entitled to be examined; but three did not attend. The examiners were engaged nearly three days in considering the answers to the questions, and ultimately passed eighty-three and postponed seven.

## LEGAL EDUCATION.

## REDUCTION OF STAMP DUTY AND INCREASED QUALIFICATION.

To the Editor of "The Legal Observer."

SIR,—I fully intended on the last occasion I troubled you to remain for the future, in regard to this subject, *sub silentio*, and to allow your correspondent, if he desired it, the merit of an apparent victory; but, like the rest of the world on certain occasions, my intention has been overruled by circumstances, over which I have had no control, and I therefore feel compelled, at the risk of wearying yourself and readers completely out with this never-ending discussion, to set right your correspondent where he has entirely, but, no doubt, unintentionally, misrepresented my views, and in one place, as I shall show, altered my words.

I appeal to you, Sir, and to such of your readers who have perused our respective communications, whether your correspondent has not shifted his ground since he first began to write. I honestly confess I considered him, in the first instance, as the chivalrous supporter of ordinary clerks as against the profession and its articulated members. But as soon as I humbly reply, giving my reasons against your correspondent's views, though acknowledging, in a general way, the worth of his supposed clients, he turns round upon me in his rejoinder with the insinuation of flattery, throws overboard altogether his former friends, the ordinary clerks, and takes under his protection that unfortunate, illused body of men, the articulated clerks! Truly, I may venture to add, with all due respect to B., "*parturient montes, nascitur ridiculus mus.*"

If there be any class in society less deserving of, or less requiring the aid and sympathy of the profession, that class is, I think, the articulated clerks. In the first place, they are almost always the younger sons of gentlemen of fortune and station, and in very many instances have something to fall back upon. They are not the most industrious, nor the most easy to manage in an office. They come and they go when and where they like; are impatient of control, and not generally gifted with any very large share of diligence, though, of course, there are exceptions. It has been my opinion for some time that the only stimulus they required was rather a stiffer examination than a lightening of their pecuniary burthens.

I do not consider that I reasoned quite so illogically as B. would very cleverly make to appear. My statement was this:—If the ordinary clerks are so immoral as B. would make out, it "was the greatest inducement possible to withdraw the attorneys from so contaminating an influence." I reasoned if B. or myself were about to engage a servant that we should both feel anxious that he was honest, moral, and respectable; that if he were not so, we should not look for the *first cause* of his worthlessness, whether it were owing to his training or manner of life, but dismiss him at once. I know I should. I should not stop to inquire the why and the wherefore he were bad, nor whether it were possible to redeem him, but should seek at once to be relieved of his presence. So, no doubt, in the case of law clerks, the very fact of their being a bad set of men (whether or no it were reasonable so to do) would be likely to prejudice the public and the profession against them. If I am advocating the interests of a body of men, I do not place their character and conduct in the worst

and most unfavourable light. And yet B. does this, and wonders how anybody should be prejudiced against them in consequence.

I assert again that, whether towards article clerks or the profession, I see no injustice in advancing ordinary clerks to an equality with the former. It must be borne in mind that ordinary clerks must become article ones before they can be so elevated, and the test of merit can be the only one fairly applied. If the article clerk who has hitherto depended solely on his own means be the best qualified by his legal attainments, industry, and talents to be the chief in an office, he will undoubtedly be so. On the other hand, if it be found that the man who possesses the greatest qualifications for the position is the ordinary clerk, he will be elevated accordingly. We all use those instruments which are most useful to us, and I have heard of attorneys advancing their clerks in their offices in preference to their sons, because they saw the former more capable than the latter. In the law, as in every other position in England, it is talent and worth, not money nor gentility, that elevate a man to the highest places of honour. Let us refer to the past, or regard the present, and we shall find that the noblest instances of greatness and good fortune have arisen from the humblest and poorest of the land. Mrs. Barbauld, in two beautiful lines, has expressed this idea—

"Man is the noblest growth our realms supply,  
And souls are ripened in our northern sky."

In my former communications, I have hinted that the profession *might* become too full, and I do not see any occasion to alter my opinion. My object, of course, can only be to maintain the respectability of the profession, and I do not, except by means of a "pecuniary barrier," perceive very clearly how this is to be done. We know that multitudes are prone to do evil, and how feeble the restraint of conscience is to the untutored mind. Lord Maidstone's remarks

about Lord Derby and the Deluge night, I consider, not unfairly be applied to the profession after the removal of the duty on articles.

I should be very sorry to make an unjust reflection upon your correspondent, whose gentlemanly courtesy towards me I must admit; but he has very curiously altered a word of mine, which places altogether a wrong construction on my argument, and it is the more curious as the words are between inverted commas. I wrote that the reduction of the stamp duty on articles to an insignificant amount would "neither afford security to the public, nor satisfy the profession of the *worth* and respectability of the aspirants." Your correspondent makes me say the "*wealth* and respectability of the aspirants," which is nonsense as regards wealth, but in a very secondary degree. His subsequent observations will not therefore apply.

I have been for a long while a reader of the *LEGAL OBSERVER*, and have been, from time to time, struck with the force and truthfulness of its arguments. I believe it has been the consistent supporter of the views I have now the honour to advocate, and which I am confident will, at no very distant period, be crowned with success. Liberal views on all subjects must, in these days of advancing civilisation, be held by every one who desires to keep equal pace in the race of life, but they must be kept in check, and trained by that conservatism which is the surest guide to real improvement.

In conclusion, Sir, with my thanks to you, I may add, as long as I fight under the shadow of your *Egis*, I need not fear being vanquished in argument, nor be liable to a charge of illiberality.

I have the honour to be,

With sincere respect,

Your obedient humble servant,

20th June, 1856.

L.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*In re Sasmarez.* June 23, 1856,

TRUSTEES' ACT, 1850. PETITION FOR VESTING ORDER.—LUNATIC TRUSTEE.—SERVICE.

Held, that a petition for a vesting Order, under the 13 & 14 Vict. c. 60, ss. 3, 5, upon the lunacy of a trustee so found by commission, should be served on the committee of his estate.

THIS was a petition for an order, under the 13 & 14 Vict. c. 60,\* upon the lunacy of one of the trustees

of a settlement, so found by commission, to vest the estate in the continuing trustee, and the new trustees appointed under the power contained in the settlement, and to transfer certain stock into the joint names of the trustees. Mr. Registrar *Wilde* having required that the petition should be served on the committee of the lunatic's estate, this application was made.

*R. Pryor*, in support.

The Lords Justices said that the committee must be served.

\* "Sect. 3 enacts that, "when any lunatic or person of unsound mind shall be seized or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics, to make an order that such lands be vested in such person or persons in such manner and for such estate as he shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate."

"And sect. 5 provides, that "when any lunatic or person of unsound mind shall be solely entitled to any stock or to any chose in action upon any trust or by way of mortgage,

it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof; and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or chose in action upon any trust or by way of mortgage, it shall be lawful for the said Lord Chancellor to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said Chancellor may appoint."

# Vice-Chancellor Stuart.

*Dollond v. Johnson; In re Cheslyn Hall.*

June 27, 1856.

SOLICITOR.—STRIKING OFF ROLLS.—BREACH OF TRUST.—MISREPRESENTATION.

*A solicitor received a sum of money from the Accountant-General and paid it into his bankers'. Part of it was subject to a trust, of which he was one of the trustees, and he represented that the same had been duly invested for the purpose. The money had never been invested: On petition of his co-trustees, he was ordered to be struck off the rolls.*

It appeared that in July, 1854, an order was made in this cause for the payment to the plaintiff of a sum of £2,990 odd, and that he attended with Mr. Cheslyn Hall, a solicitor, at the Accountant-General's, when it was paid, and Mr. Hall wrote his bankers' names across the cheque. One fifth of this sum was subject to the trusts of a deed, of which Mr. Hall, Mr. John Turner, and Mr. William Henry Palmer were trustees for the benefit of a Mr. and Mrs. Johnson and their children, and the remainder was payable to Mr. Hall and his partner as mortgages or otherwise. Mr. Nicholson, who was Mr. Johnson's solicitor, in October, 1855, requested from the Messrs. Hall information relating to the suit, when Mr. Hall delivered a memorandum to the effect that the one-fifth had been invested. In May last this was discovered to be untrue, and this petition was accordingly presented by his co-trustees, praying that Mr. Hall might be struck off the rolls.

*Goldmaid in support; Bacon and Bird contra.*

The Vice-Chancellor (after having refused to hear *Leach* for the *cestui que trustent*) said, this is an application of a very painful kind, and it is impossible not to agree with what has been urged by the respondent's counsel that the order is highly penal, and one which the Court is not justified in making except on the clearest evidence, and in a case of imperative necessity arising from the obligation which the court owes to the public. It is urged that there is no instance of the court punishing in such a way one of its officers guilty of a mere breach of trust. But a breach of trust by an officer of the court is a very serious matter, and unless the officers of this court are in the highest degree trustworthy, the greatest danger to the public must occur. It is the duty of the court, when it finds one of its officers clearly guilty of conduct which shews him not to be trustworthy, to remove him from the list of its officers. Transactions in ordinary business can only be carried on in reliance on the integrity of individuals; for if in every transaction nothing were done without the strictest legal evidence, and if nothing were to be taken on the faith of representations being true and honest, the transaction of business would be so impeded as to make the affairs of mankind in the highest degree difficult to be conducted. What is alleged against the respondent is not a mere breach of trust; not that he merely received a sum of money of which he was a trustee, and misappropriated it; but that, in addition to receiving and not properly applying a sum of money he wilfully and deliberately put into the hands of the solicitor of the person interested in the fund, a representation that it was invested. That that was an untrue and dishonest representation was beyond all doubt, and the unfortunate nature of Mr. Hall's case is that he is obliged to rely on technicalities and circumstances, which do not shew the

representation is one to be excused or honest. It is said that it was made to a person who does not complain of it, and that the parties now complaining have no right to do so. If this were the case, the Court would be bound to act on that view, but the persons complaining are the co-trustees, and can hardly be said to be wholly unconcerned in the matter. It appears to be wholly immaterial to consider whether Mr. Hall was the solicitor in the cause for Mr. Johnson or not. The case, however painful, is therefore one about which there is not the slightest doubt or difficulty, and this gentleman has been guilty of such a misrepresentation, in addition to a breach of trust, that he cannot, consistently with what is due to the public and to the other men of high honour and character in the profession, be allowed to remain an officer of this Court.

# Vice-Chancellor Kindersley.

*Colvin v. Lord.* June 28, 1856.

AFFIDAVIT.—FILING, AFTER EVIDENCE CLOSED.—PRACTICE.

*Held, that in order to obtain leave to file an affidavit after the evidence is closed, it should be shewn to be material, and to further the ends of justice.*

*Where an affidavit was sought to be filed, which was made in India, and it contained nothing more than was before the Court on a former occasion, and where a commission to examine witnesses in India had been refused:—Held, that leave to file it could not be granted.*

THIS was an application for leave to file an affidavit made by a gentleman in India, notwithstanding the evidence in the cause had closed. It appeared that commissions had been granted for the examination of witnesses in France and Scotland on the question of the domicile of the testator, Dr. Cochrane, but that his Honor had refused to direct a commission to India where the testator had resided.

*Glasse and Welford, in support; Anderson and E. F. Smith, contra; C. Purton Cooper and W. Morris, for other parties.*

The Vice-Chancellor said, that, although it was a matter-of-course to grant a similar application, if it was shown to be material, and to further the ends of justice, yet the affidavit, in the present case, contained nothing more than was before the court on the former occasion, and the application would be refused.

# Vice-Chancellor Wood.

*Williter v. Dobie.* June 28, 1856.

FEME COVERT.—WILL.—CONSTRUCTION.—FUNERAL EXPENSES.—CHARGE ON RESIDUE.

*A testatrix by her will, made in execution of a power of appointment reserved by her marriage settlement, appointed the interest and dividends of certain stock to her husband for life, with remainder as therein mentioned. She then gave two legacies of £50 each, and directed and appointed the residue of her personal estate, from and after payment of her just debts and funeral and testamentary expenses, among her nieces:—Held, on special case, that her husband, who had paid her funeral expenses, was entitled to be paid the same out of the residue in priority to the nieces.*

THE testatrix, by her will, made in execution of a power of appointment, reserved by her marriage settlement



appointed the interest and dividends of certain stock to her husband for life, with remainder as therein mentioned. She then gave two legacies of £50 each to one of her executors and a niece, and directed and appointed the residue of her personal estate, from and after payment of her just debts and funeral and testamentary expenses, among her nieces. The husband had paid the funeral expenses, and the question was submitted for the opinion of the Court, on this special case, whether he was entitled to be repaid these expenses out of the residue in priority to the legacies.

Gowan, for the husband; Nizon, for the executors.

The Vice-Chancellor said, that the will charged the payment of these expenses on the residue, and that they were payable, in the first instance, thereout.

### Court of Exchequer.

*Barstow v. Reynolds.* June 11, 1856.

COMMON LAW PROCEDURE ACT, 1854.—APPEAL FROM RULE FOR NEW TRIAL.

*On a rule nisi to enter a non-suit, the Court, upon there being a question as to the facts, directed a new trial simpliciter. Held: that this was a matter of discretion, from which there was no appeal under the 17 & 18 Vict. c. 125, s. 35.*

THIS was a rule nisi to rescind a rule giving the plaintiff leave to appeal from a rule absolute for a new trial. It appeared that on the trial leave was reserved to the defendant to move to enter a non-suit, but on the rule being accordingly obtained, there being some question as to the facts, the Court, without entering into the question of law, directed a new trial.

By the 17 and 18 Vict. c. 125, s. 34, it is enacted that, "In all cases of rules to enter a verdict or non-suit upon a point reserved at the trial, if the rule to show cause be refused or granted and then discharged or made absolute, the party decided against may appeal." And by s. 35 that, "In all cases of motions for a new trial upon the ground that the judge has not ruled according to law, if the rule to show cause be refused, or, if granted, be then discharged or made absolute, the party decided against may appeal, provided any one of the judges dissent from the rule being refused, or, when granted, being discharged or made absolute, as the case may be, or, provided the court in its discretion think fit that an appeal should be allowed; provided, that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence or otherwise, no such appeal shall be allowed."

*Wilde and Cleasby* showed cause.

The Court (without calling on *Barstow* in support) said the question originally was whether a non-suit should be entered, and the Court, upon the facts not sufficiently appearing, granted a new trial simpliciter. This was a matter of discretion from which there was no appeal under the 35th section. The rule would therefore be made absolute to set aside the rule giving leave to appeal.

*Jones v. Jenner.* June 12, 1856.

COMMON LAW PROCEDURE ACT, 1854.—ATTACHMENT OF DEBTS.

*Semble, that an attachment of debts under the 17 & 18 Vict. c. 125, s. 61, will not be granted where the power of issuing execution on the judgment is gone.*

*Therefore, where a judgment creditor sued in the county court on the judgment, and obtained an order for payment by instalments, some of which were paid, a rule for an attachment of a debt was refused.*

THIS was a motion to attach a debt due to the defendant, under the 17 & 18 Vict. c. 125, s. 61, which enacts that "it shall be lawful for a judge, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his attorney, stating that judgment has been recovered, and that it still is unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order, it may be ordered that the garnishee shall appear before the judge or a master of the Court, as such judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt." It appeared that the plaintiff had obtained a judgment in an action in this Court, and had then sued thereon in the county court, where the debt was ordered to be paid by instalments, some of which had been paid.

*Lush* in support.

The Court said that as the power to issue execution on the judgment in the superior Court was gone after the judgment obtained in the county court, the right to attach debts was also gone, and the rule would therefore be refused.

### Exchequer Chamber.

*Bart v. Haslett.* June 13, 24, 1856.

LEASE—COVENANT—REMOVAL OF IMPROVEMENTS—BREACH OF.

*The lessee of certain premises covenanted not to remove any erections or improvements which should be made during the term of the lease. It appeared that he had taken out the old shop window, and replaced it by a plate glass one, which was wedged in and not fixed by nails or screws. Held, nevertheless, affirming the judgment of the Court of Common Pleas, that the defendant was not entitled to remove the same, and to put back the old window.*

It appeared that the defendant, under a lease of certain premises from the plaintiff, covenanted not to remove any erections or improvements which should be made during the term of the lease, and that he had taken out the old shop front and replaced it by a new plate glass one, which was, however, only wedged in and not affixed to the frames by screws or nails, and that before the expiration of his tenancy he removed it and replaced the old window. The plaintiff thereupon brought this action for breach of the covenant, and on reference to arbitration a case was stated for the opinion of the Court of Common Pleas, whether the window in question was such a fixture as the defendant was bound to leave under the covenant. The plaintiff obtained judgment, whereupon this error was brought.

*Hawkins* in support; *R. E. Turner* contra.

*Cwr. ad. vult.*

The Court affirmed the judgment of the Court below.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, JULY 12, 1856.

### THE APPELLATE JURISDICTION BILL.

ONE of the most important bills which has passed the House of Lords, after being submitted to a select committee, is that of the *Appellate Jurisdiction of the House of Lords*. It was read a second time in the House of Commons on Monday last, after much opposition; the number in its favour being 191, and against it 142: majority, 49. It will be proper, on so important a measure, to notice some of the main points urged *pro* and *con* by the principal speakers on the subject.

According to the statement of the Attorney-General the defects of this ultimate court of appeal are as follow:—

1. With the exception of the Lord Chancellor and the Lord Chief Justice for the time being, the judges consisted exclusively of ex-chancellors, with the occasional, but very rare, exception of some other members of the house who had belonged to the profession of the law. A body of judges so composed was open to several inconveniences. Its number must depend more or less upon accident. Sometimes the number of ex-chancellors had been very considerable, but sometimes it had been comparatively small. Again, considerations of age and infirmity would have a great bearing upon the number of law lords able to attend.

2. There was nothing to render it in any degree obligatory upon ex-chancellors to attend on the hearing of appeals, even supposing there were no obstacles to prevent their so doing. The consequence had been that the number of law lords who sat in appeals had for some time past been below what could be called satisfactory either to the suitors or the country. It had very often happened that not more than two, or even one law lord had been present—and that, too, when the cases which came before the house had had the opinion of two of the courts of common law confirming perhaps the decision of the third; when they had been decided by the Lords Justices, confirming in like manner, perhaps, the judgment of the Master of the Rolls or one of the vice chancellors; or when they had come up from the Court of Session in Scotland, which consisted of a number of judges.

3. In cases where there were two judges in the House of Lords, nothing had been more frequent than that they should hold a divided opinion, and in that case no judgment could be given on the appeal; and the effect must necessarily be to cause a feeling of great dissatisfaction. In a case mentioned in the evidence there had been conflicting decisions given

by the Court of Exchequer and the Master of the Rolls. There was an appeal from the judgment of the latter, and it was heard before two law lords; they differed, and the result was that the judgment of the Master of the Rolls was confirmed, notwithstanding the conflicting decisions of the Court of Exchequer. If it happened that the Lord Chancellor was sitting alone, he might confirm by his own judgment a decision which he had given in the Court of Chancery in opposition to that of an inferior court.

4. Not only was the composition of the House as an appellate tribunal unsatisfactory, but its sittings were necessarily co-extensive only with the session of parliament; and nothing could be more inconvenient than such an arrangement where there were appeals in cases of injunctions or of specific performance. The shortest period at which an appeal could be brought to bear was, at least, two years.

5. There were several other matters of which complaints had been made, such as the want of all the externals of a court of justice, the absence of a distinctive dress, the judges not sitting together, the grievous expense to which suitors were put, and the like. All these were things which could be corrected by the House of Lords itself; but the others were matters which could not be redressed except by the interposition of the legislature.

In considering the remedy for this unsatisfactory state of the appellate jurisdiction, the *Attorney-General* observed—

That the Government might undoubtedly elevate a sufficient number of eminent judicial persons to the dignity of the peerage; but there would be considerable difficulty in carrying a plan like that into effect. There were now few lawyers who could afford, with any due regard to themselves or their families, to take upon themselves the dignity of a peerage. Things were not as they used to be, and fortunes were not now to be easily earned at the bar. The number of the courts had of late been greatly increased. Formerly there were few Queen's counsel; now there were a great number; and many changes had been made in the administration of justice, which were beneficial, no doubt, to suitors, to the public, and to the profession, but which rendered it very difficult to amass such fortunes as would justify a man imposing on his family the onerous burden of a peerage. They were thus in this dilemma. The House of Lords would not admit life peers, and they could not obtain a sufficient number of lawyers to accept hereditary peerages; they would not part with their appellate jurisdiction, and it was admitted on all hands, their lordships included, that the exercise of that jurisdiction was in a most unsatisfactory condition. Besides, even if the House of Lords were disposed to admit peers created for life, they would

still have to resort to legislation for the purpose of making the sittings of the appellate tribunal co-extensive with the legal year."

It is indeed manifest that it would be of incalculable advantage to the suitors who are dissatisfied with a decision against them, if they could readily appeal to the highest court, sitting in the months of November, December, and January, when the Parliament is not sitting, and when the law lords are not oppressed with the consideration of proposed new laws, but may give undivided attention to the adjudication of important questions on the existing law. We doubt not that many appeals are lodged for the very purpose of delay, because it is known that usually no decision can be obtained in less than two years.

A large part of the debate on the 7th inst. was occasioned by the conflicting opinions on the subject of life peerages, it being urged that, although within the power of the Crown to grant, yet it was dangerous to the constitution to break in upon the hereditary character of the Upper House. It must be remembered, however, that the due administration of justice is of the first importance to the community at large, and it may be readily conceded that, in effecting that great object, the fullest safeguards should be provided against any invasion of the rights or privileges of the hereditary peerage. The real question is, whether the bill, of which their lordships have themselves unanimously approved, does not amply secure the hereditary principle?—and whether the introduction of the limited number of four life peerages, for the express purpose of improving the judicial functions of the House and preserving that important jurisdiction, can rationally be said to involve the smallest amount of danger? It is admitted on all hands that, from various causes, the constitution of this ultimate Court of Appeal is in an unsatisfactory state, and in order to ensure the respect of the public and the profession it requires to be strengthened and improved.

That eminent statesman, Sir James Graham, exerted his powerful eloquence and great skill in debate, to oppose the bill. Passing over that part of his speech which relates to the (so-called) *Constitutional*, and not the *Legal*, question of the Queen's prerogative to create life peerages, we proceed to notice the objections to the proposed amendment of the judicial staff of the House of Lords. Sir James observed that—

"The alleged evil which this bill was proposed to counteract was that there was too much representation of the law in the House of Lords, and that the sons of great lawyers who had been made peers had not sufficient means to maintain adequately the dignity of their station. The cure for this evil suggested by the bill was most curious. For the risk of having the sons of lawyers with inadequate means, it proposed to substitute the introduction of lawyers as peers for life before they had earned in their profession sufficient means of maintaining the indepen-

dence and dignity of the peerage. Poverty was avowedly and for the first time made one of the ingredients in the qualifications for a life peerage. What would be the effect of this? The new creation would be a brand of dependence; it would be a mark of inferiority; it would engender a constant hope on the part of the peer for life of being enabled to work out his own independence and to obtain from the ministry of the day the more honourable station of an hereditary peerage. It would have another effect. What was the very title of peers?—*Paria* those who were equal.\* Here would be a degraded class, unequal in its position to the rest, looked down upon by the hereditary peers on account of their poverty and their inequality. What had the law done to deserve this indignity? He could not conceive any position more painful than that of hanging on the skirts of the minister of the day in the hope of becoming the equal of that body among which one had been introduced. If this bill passed no Chancellor would ever again obtain the hereditary peerage which was bestowed on Clarendon, on Hardwicke, on Camden, on Eldon, and others whose names it were needless to mention, but whose descendants were among the most revered and respected persons in that House, on account of their descent from men who rose in their day to pre-eminent station by the exercise of pre-eminent talents. If this bill passed the only chance henceforth of a lawyer's obtaining an hereditary peerage would consist either in his being rich or in his being childless; he would not attain it through pre-eminence in his profession.

"Moreover, he would ask, was it possible to stop with the selection of lawyers for life peerages? The Attorney-General told them that this bill was the best cure that the Government could offer for the evil. The House of Lords, he said, would not part with its jurisdiction, and they must take this or nothing. By this bill the life peerages were limited to four in number. The deputy speakers must be men who had long occupied a prominent station: they must, therefore, soon be old men, and subject to the infirmities of age; and if, in consequence of their infirmities, it became necessary to appoint others to the same office, they would still remain peers for life. But would the thing stop there? He felt quite satisfied that if the precedent were established the creation of life peerages must be extended to the army and navy and to politicians. He was sorry to say that poverty was not confined to the law. The law was a much more lucrative profession than the profession of arms; for admirals and generals did not make their ten, fifteen, and twenty thousand a year. He doubted whether the leaders of the bar were not in the receipt of larger incomes than were enjoyed by the leading members of any other profession, or whether at any former period persons in their position received greater remuneration; and supposing such persons to have combined thrift with industry and learning, why should the honours which they won be limited to the short and narrow compass of their own lives?"

On this argument it may be remarked, that an elevation to the peerage would not be conferred without consulting the wishes of the eminent Judges to whom the honor was proposed. They might accept or decline the

\* The members of the House are not strictly "*paria*;" there is a wide difference between a duke and a baron; and amongst the modern peerages Lord Cottenham's son stands a step higher than Lords Lyndhurst and Brougham!

honor, as they thought fit. And the supposition that the four life peers would be an inferior class, or that they would be looked down upon by the hereditary members, was surely altogether unfounded. The Archbishops and Bishops are not less esteemed than any lay peer who traces his descent from some Norman baron. If such an improbable event as once occurred to Lord Thurlow, who was treated with some disrespect by a peer of ancient lineage, should be repeated, we doubt not that the nobility of nature, of worth, learning and talent would be asserted over the accident of birth! There can indeed be no fear that any of the three or five Judges of the highest Court of Appeal, members of the House of Peers, will, either by their hereditary brethren, or the legal profession, or the public, be held in any other than the highest esteem. We assume, of course, that the Government will select for this distinguished office such men as Lord Wensleydale.

In illustration of the defective state of the appellate power of the Lords, Sir James Graham adverted to several remarkable cases, somewhat recently decided, in which the profession, if not the public, was much dissatisfied. He said,—

“There was the case of *Mr. O’Connell*. In that case the opinion was taken of nine of the common law judges. Seven were in favour of a conviction, and two against it. It came to be decided by a few law lords, and they quashed the conviction. He did not see the hon. and learned member for Suffolk in his place, but he also was counsel for Mr. O’Connell, and before the committee of the House of Lords had given it as his deliberate opinion that if that case had been the case of an ordinary man, an operative, the judgment would have been pronounced the other way. Vice-Chancellor *Stuart* had also in evidence given a similar opinion; and his lamented friend Sir William *Follett* declared that in his opinion the House of Lords impaired their jurisdiction in a manner which would not be restored, by failing on that occasion to put aside every political bias which might exist on the part of the law lords, and by the lay lords failing to do what he thought was their duty—maintain the opinion of the majority of the judges. There was another case—the case of the *presbyterian marriages*. That case was argued in Ireland, and was brought to the House of Lords.

The English judges were called in, and they unanimously concurred with what had been done by the Irish judges. But it was by mere chance that that judgment of the English and Irish judges was sustained. There was an equality of voices, and consequently there was no judgment at all. Then there was another case—the *Bridgewater* case. Eleven judges were called in on an appeal. Nine out of the eleven agreed with the Lord Chancellor, but the voice of the eleven and the voice of the Lord Chancellor, the head of the law sitting in his own court, was reversed by the voice of three ex-chancellors.

“The Scotch cases were more remarkable still. This bill did not profess to provide any remedy for the Scotch cases. His hon. friend presumed that one of the Scotch judges was to be elevated to a

peerage for life, and was to be one of the deputy speakers. But what would the English and Irish suitors say of one judge out of three being a judge who had been trained under a different law and a different system? But this bill did not deal with Scotch cases in the slightest manner, for what was the state of the administration of justice with regard to Scotch appeals? It was known that Lord *Erskine*, in his place in the House of Lords, when he held the Great Seal, declared that he knew as much of the law of Scotland as he knew of the law of Mexico. Then there was Lord *Truro*. He did not believe that a more honest and upright man ever filled the seat of justice. He had a quality more precious than learning, he had the strongest love of justice; and he was not ashamed even to own his imperfect knowledge when justice was at stake. He sat by sad compulsion a whole session alone to hear Scotch appeals, and it was recorded of him that when he first began to sit, there was an elementary question respecting Scotch entails, and he asked to be allowed to take home with him an elementary book on Scotch law. Lord *Truro* heard these Scotch appeals for a whole session, and such was his love of justice that he never pronounced a single judgment.”

Such are the admitted imperfections of this high court of ultimate resort.

Some remarks were then made on the insufficiency of the number of the proposed Lords of Appeal; on the small amount of the salary proposed to be paid to them; and on the inroad it would make on the independence both of the bench and the bar. The right Honourable Baronet said:—

“He must touch on a point which, considering the number of members of the legal profession who were in that house, would, he feared, be unpleasant; but love of truth compelled him to introduce it. If this bill passed, it would, in his humble judgment, debauch both the bench and the bar. The practice, and the right practice, was that puisne judges were very rarely indeed permitted to become chiefs of their courts, the chiefs being generally selected rather from the bar than from the bench. Under this bill the crown would have the power of looking along the line of puisne judges and holding out the appointment to a deputy speakership of the House of Lords and a peerage for life, with the possibility of an hereditary peerage in reversion. The tendency of such a state of things would be, in his opinion, to debauch the bench of judges, while a corresponding influence might be exercised upon the leaders of the bar. He hoped he said this without offence. No man living valued more highly the honour and independence, the learning and the character of the bar; but he deprecated the throwing in their way temptations which were inconsistent with their honour.”

In considering the best remedy for the evil which was admitted, Sir James said:—

“It was quite competent to the House of Lords to amend their jurisdiction without the intervention of the other branches of the legislature. He believed they had the power of summoning to their assistance not only the common law judges, but the equity judges, and also the members of the Judicial Committee of the Privy Council. Why should they not at the commencement of a session classify the appeals, assigning the common law appeals to be heard before

the common law judges, the equity cases before the equity judges and members of the Judicial Committee of the Privy Council, and the Scotch appeals to be heard before the Lord Justice General, the Lord Justice Clerk, and one or two more of the Privy Council?"

The Solicitor-General, after noticing several of the grounds of opposition to the bill, which had been urged in the course of the debate, remarked:—

"That the appeals to the House of Lords arose upon every variety of subject, and from every court of jurisdiction, and it was doubtful how far any Lord Chancellor could be properly trusted to pronounce a sentence upon questions referring to the function of courts, and upon a state of law of which he had had no experience, and whose judgment must, like the laws of the Medes and Persians, remain in force unless altered by special act of Parliament. The Courts of Queen's Bench, Common Pleas, and Exchequer had each four judges sitting in banco, and in all plurality of voices was recognised as the leading characteristic. Now it was proposed to adopt the same rule with regard to the court of appellate jurisdiction. When Lord Lyndhurst, Lord Brougham, Lord Truro, and Lord Campbell, sat together in the House of Lords to hear appeals, there was no fear but that the decision would be always satisfactory.

"The necessity of some change was obvious. But were they to alter the system by pulling down the authority of the House of Lords, or were they not rather to endeavour to provide a remedy for the defect which had been pointed out? Deputy speakers had been appointed in former times, and it was now only asked to make that perpetual which formerly was only resorted to occasionally. The Judicial Committee of the Council (to which some were inclined to transfer the appellate jurisdiction) was exposed to the same objection as the House of Lords; it was composed of judges gathered from the other courts. For the last eight or nine days the appeal court in Chancery had been shut up because the judges were engaged in the Judicial Committee of Privy Council. By transferring to that body the appellate jurisdiction of the House of Lords, the evil would only be augmented. They would be pulling down the ancient tribunal in favour of a court of yesterday; and it would then be necessary to create a number of additional things. Surely it was better to improve than to destroy—to restore than to pull down."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INSURANCE ON LIVES (ABATEMENT OF INCOME TAX) CONTINUANCE.

19 & 20 Vict. c. 38.

The preamble recites 16 & 17 Vict. c. 91; 18 & 19 Vict. c. 85; and the 16 & 17 Vict. c. 91, is continued until 5th July, 1857.

The following are the title, preamble, and section of the Act:—

An Act to continue the Act for Extending for a Limited Time the Provision for Abatement of Income Tax in respect of Insurance on Lives.

June 30, 1856.

Whereas an act was passed in the session of Par-

liament holden in the sixteenth and seventeenth years of her Majesty's reign, chapter ninety-one, intitled "An Act to Extend for a Limited Time the Provision for Abatement of Income Tax in respect of Insurance on Lives," and was limited to continue in force until the fifth day of July, one thousand eight hundred and fifty-four: And whereas, by certain other acts subsequently passed, and more especially by an act passed in the last session of Parliament, chapter thirty-five, the said first-mentioned act has been amended and extended, and now stands limited to continue in force until the fifth day of July, one thousand eight hundred and fifty-six, and it is expedient further to continue the same so amended for such period as hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The said first-mentioned act so amended as aforesaid shall be, and the same is hereby continued in force until and upon the fifth day of July, one thousand eight hundred and fifty-seven.

### WEST INDIA LOANS.

19 & 20 Vict. c. 35.

The preamble recites the 2 & 3 W. 4, c. 125; 5 & 6 W. 4, c. 51; 8 & 4 Vict. c. 40; 7 Vict. c. 17; 8 & 9 Vict. c. 50; 11 & 12 Vict. c. 38. Commissioners may grant extension of time on certain conditions; applications for extension to be made within two years; on payment of interest due, commissioners to forbear compelling payment of principal, upon certain conditions; extension of time not to prejudice existing securities.

The following are the title, preamble, and sections of the Act:—

An Act to authorise the West India Relief Commissioners to grant further Time for the Repayment of Monies advanced by them in certain Cases.

June 30, 1856.

Whereas it is expedient that the commissioners for the carrying into execution the above-mentioned acts should have such further powers as are hereinafter mentioned: Be it therefore enacted:

I. It shall be lawful for the commissioners for the time being acting in the execution of the said recited acts and this Act, or any three of them, to grant any extension of the time limited for the repayment of any loan which shall have been made under the authority of the aforesaid acts, or any part of any such loan, so as such extension of time shall be made in every case on condition that the whole amount of such loan shall be secured, to be paid by instalments of such amount as the said commissioners shall think fit, and so as in every case of extension of time under the powers of this act, such further security be given as the said commissioners shall think proper; and any such extension of time may be made upon such other terms and conditions (if any) as the said commissioners may require: And every such further security shall be made in such form and to such person or persons as the said commissioners shall direct: Provided, nevertheless, that no such extension of time shall be granted in pursuance of the powers of this act, except with the consent in writing of the Lord High Treasurer for the time being, or of any two or more of the com-

missioners of her Majesty's Treasury for the time being; provided also, that every application for such extension of time be made in writing within two years from the passing of this act.

2. From and after payment (if made within six calendar months from the passing of this act) of all interest which may be due at the time of the passing thereof in respect of any such loan, the said commissioners for the time being, acting in the execution of the said recited acts and this act, shall forbear from compelling payment of the principal monies due in respect of such loan as long as a sum equal to one-twentieth part of the principal monies which may be due or owing in respect of any such loan at the passing of this act, together with interest thereon, or on so much thereof as may from time to time remain unpaid, be paid annually, the first of such annual payments to begin and be paid at the expiration of one year from the passing of this act; and for the purposes of this provision no grant of extension of time shall be necessary; but if default shall be made in payment of any instalment or any interest contrary to this provision, the principal and interest remaining unpaid at the passing of this act, or at the time of such default, as the case may be, shall become immediately due and payable, and be recoverable in the same manner as if this act had not been passed.

3. No such extension of time to be granted as aforesaid shall in anywise alter or prejudice the existing security for any loan, either originally made or under any extension of time already made, and the same, except as the same may be agreed to be altered by the said commissioners under the powers of this act, shall be and remain in full force in every respect as if no extension of time had been granted under the powers of this act.

## LAW OF PARTNERSHIP BILL AS AMENDED IN COMMITTEE.

[The Clauses marked A., B., and C. were added in Committee.]

1. This act shall not apply to the business of a banker.

2. The term "trader" shall include any person, partnership, company, or body corporate carrying on any trade, business, or undertaking.

3. No person making a loan to any trader shall be deemed to be a partner of, or to be subject to any liabilities incurred by, such trader by reason only that he receives as a compensation for such loan a portion of the profits made in any business carried on by such trader; but in case of the insolvency or bankruptcy of such trader no portion of such loan as aforesaid shall be recoverable until after all other creditors shall have been fully satisfied as to their lawful claims on the said business.

4. No person, being an agent or servant or person in the employ of any trader, shall be deemed to be a partner of or to be subject to any liabilities incurred by such trader, by reason only that he receives as a remuneration for his services as such agent or servant a portion of the profits made in any business carried on by such trader.

5. No person receiving by way of annuity or otherwise any portion of the profits made by any trader in his business shall by reason only of such receipt be deemed to be a partner of or to be subject to any liabilities incurred by such trader.

6. A. In cases where any lender, agent, or servant,

or any annuitant, has contracted with a trader to receive a portion of the profits made by such trader in his business, and as part of such contract has agreed that the amount of profits made by such trader, and any other matter arising out of such contract, is, in case of dispute, to be settled by arbitration, such provision as to the settlement of the dispute by arbitration shall be imperative upon the parties to the contract; and no court of law or of equity shall, as between the parties to such contract, or any persons claiming through them, take any account of such profits or cognizance of any matter within the scope of such arbitration.

7. B. In cases where the parties themselves have made provision as to the manner in which the arbitration is to be conducted, the arbitration shall be conducted accordingly; but in cases where no such provision has been made, arbitrations shall be conducted in manner directed by the Railways Clauses Consolidation Act, 1845; and all the Provisions of such last-mentioned Act, with respect to the settlement of disputes by arbitration, except the sections numbered 129 and 184 respectively, shall be incorporated with this act.

8. C. In cases where the arbitrators appointed under this act refuse, or for seven days after the request of either party to the arbitration neglect to appoint an umpire, any judge of her Majesty's superior courts sitting in chambers, or the judge of the county court which has jurisdiction over the district where the trade is carried on in respect of which the dispute has arisen, may appoint an umpire.

## EVIDENCE IN FOREIGN SUITS BILL.

By this Bill, which has been introduced by the Lord Chancellor to provide for taking evidence in her Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals, it is proposed to enact:—

1. Where, upon an application for this purpose, it is made to appear to any court or judge having authority under this act that any court or tribunal of competent jurisdiction in a foreign country, before which any civil or commercial matter is pending, is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order, of such witness or witnesses accordingly; and it shall be lawful for the said court or judge, by the same order, or for such court or judge or any other judge having authority under this act, by any subsequent order, to command the attendance of any person to be named in such order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to the time, place, and manner of such examination, and all other matters connected therewith, as may appear reasonable and just; and any such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge.

2. A certificate under the hand of the ambassador, minister, or other diplomatic agent of any foreign power, received as such by her Majesty, or in case there be no such diplomatic agent, then of the consul

general or consul of any such foreign power at London, received and admitted as such by her Majesty, that any matter in relation to which an application is made under this act is a civil or commercial matter pending before a court or tribunal in the country of which he is the diplomatic agent or consul having jurisdiction in the matter so pending, and that such court or tribunal is desirous of obtaining the testimony of the witness or witnesses to whom the application relates, shall be evidence of the matters so certified; but where no such certificate is produced, other evidence to that effect shall be admissible.

3. It shall be lawful for every person authorised to take the examination of witnesses by any order made in pursuance of this act to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorised; and if upon such oath or affirmation any person making the same wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury.

4. Provided that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial.

5. Provided also, that every person examined under any order made under this act shall have the like right to refuse to answer questions tending to criminate himself, and other questions, which a witness in any cause pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made would be entitled to; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause.

6. Her Majesty's superior courts of common law at Westminster and in Dublin respectively, the court of session in Scotland, and any supreme court in any of her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who by any order of her Majesty in council may be appointed for this purpose, shall respectively be courts and judges having authority under this act.

## GRAND JURIES BILL AS AMENDED IN COMMITTEE.

THIS Bill provides that witnesses attending before the grand jury may be sworn by the foreman, or any member of the grand jury, to give evidence in support of any bill of indictment, and the witnesses may be examined by the grand jury touching the matters in question, and the name of every witness examined, or intended to be examined, is to be indorsed on the bill of indictment, the foreman writing his initials against the name of each witness.

After the passing of the act persons need not be sworn in court to qualify them to give evidence before the grand jury.

The act is not to affect the fees of any officer of court for swearing witnesses, but such fees are to remain payable.

## MEMOIR OF THE LATE WILLIAM SEYMOUR, ESQ.

MR. SEYMOUR practised as a solicitor in the metropolis for thirty years. He was one of the earliest promoters of the Law Institution, and was elected on the first committee of management. He contributed the liberal sum of £300 towards the fund with which the site of the institution was purchased, but retired to Brighton before the building was completed. Soon after he took up his abode there, he devoted his unceasingly active mind in devising or promoting means for the prosperity and welfare both of the town and county, more particularly in prison discipline. In 1829 he was placed in the commission of the peace for Sussex by the late Earl of Egmont, then Lord-Lieutenant of the county, and later in the same year was made a Deputy-Lieutenant. In 1834, on the retirement of Mr. Courthope, Mr. Seymour was appointed assistant chairman of quarter sessions by the Earl of Chichester, from which office he retired upon the passing of the Prisoners' Statute Bill, having an objection to act as counsel against the prisoner. He continued to perform his duties as a magistrate, and for some years as chairman of the Brighton bench until 1840, when he retired at the age of seventy, in accordance with a determination previously expressed by himself to the Lord-Lieutenant.

On his retirement, the thanks of the Court were given to Mr. Seymour for his conduct during the time he had acted as a magistrate. Captain Shiffner, in moving the resolution, said there were some occasions when he had differed from Mr. Seymour; but at the same time he could not but express the sense which he entertained of Mr. Seymour's services and unwearied attention, and also of his arrangement of business to be brought under the consideration of the Court. Formerly the magistrates had felt great inconvenience in consequence of not knowing till they came into Court what business was to be transacted; but this inconvenience was removed by an arrangement introduced by Mr. Seymour, who had also rendered great service by presiding as chairman at the quarter sessions. Captain Shiffner then moved the following resolution:—"That the thanks of this Court be offered to Mr. Seymour for the zeal and ability with which he discharged the duties of a magistrate of this division of the county, and especially for the indefatigable attention which he has so constantly and beneficially applied to our House of Correction."

Mr. Gear, in seconding the motion, said it had been his good fortune to act in conjunction with Mr. Seymour as a visiting magistrate, and there could be only one opinion of the value of Mr. Seymour's services in that capacity. His great object was to promote public justice, and to promote it in connection with the improvement of the persons who had offended against the laws. He did this by the measure, which on his proposition was carried, for making separate cells; and he (Mr. Gear) thought that there was no one measure which the magistrates had adopted so much to the advantage of the public as that. But for this they would have had much more crime; and the county must of course have been put to much greater expenses. In an economical point of view Mr. Seymour's services had been invaluable; but there was a principle involved in the measure which was of much greater consequence—the principle of morality. The separation of pri-

soners had certainly more than anything else contributed to the improvement of their morals, and he thought it would tend to the happiness of Mr. Seymour in his last moments to think that he had effected so much good, not to the public only, but also to the unfortunate class of persons whom they were called upon to punish.

The Earl of Chichester, who presided at the meeting said, in putting this resolution to the Court, they scarcely could expect that he could do so in silence, when it must be known to many of the magistrates present how many years he had been not only a brother magistrate of Mr. Seymour, but on the most intimate and confidential terms with him. "I have (said his lordship) long felt, and indeed have ever felt since I have had the honour of being a magistrate in this county, and had the pleasure of knowing Mr. Seymour, that he was one of the most active and useful magistrates. Captain Shiffner and Mr. Gear have already alluded to his public services; and there are two of those services of which I am not so competent to speak as others—I mean his conduct on the Bench and in Court, because the success and ability with which he discharged the duties of these functions I can only know by report. But with regard to the value of his services here, and still more as visiting justice of the Lewes House of Correction, I can without undue partiality say that I think the county is not indebted to any individual magistrate more than to Mr. Seymour. I perfectly agree with Mr. Gear that the great improvements in the House of Correction are mainly owing to the zeal and attention of Mr. Seymour, not only in proposing the new arrangements, but for the indefatigable manner in which he watched the carrying out of that measure, and when the Court remember that he has been during a considerable number of years, and up to the moment when Mr. Seymour felt it incumbent on him, from his increasing years, to retire from the office of magistrate, I think we must admit that he has shewn a degree of persevering diligence in the cause of prison discipline and the performance of the duties of a magistrate which is scarcely ever to be met with. With regard to the success of his efforts, and the efforts of those who have acted with him in promoting the improvements of the House of Correction at Lewes, I do believe that at the present moment, if it were not for the inconvenience of the prison, owing to its unfortunate construction, it would be the best prison in the kingdom. If the constant attention of the magistrates to the most minute concerns of the prison and to the conduct of the officers,—if a constant attention to the wants of the officers and the prisoners,—if these be important and valuable services to render to the county, then I am sure Mr. Seymour has set us a most remarkable example in these duties; for no man has been more diligent, more attentive and more successful than he has been."

His lordship then read the resolution, which was put and carried unanimously; and on the motion of Captain Shiffner, the noble chairman was requested to communicate it to Mr. Seymour.

From the period referred to until a recent illness Mr. Seymour took a very active part in promoting the success of the local charities, particularly the county hospital, the dispensary, and the Brighton branch of the Royal Humane Society, in which he shewed great interest. He was ever a staunch friend to education, and to the progress of literature, the arts, and sciences. Early in 1850 he was a second

time left alone in the world by the death of Mrs. Seymour, and shortly afterwards his friends and admirers assembled at the Town Hall, "to consider what step should be taken to present to him some lasting token of respect for his public worth." The Earl of Chichester presided, and the meeting was attended by many of the most influential residents; and upon the motion of Richard Newnham, Esq., seconded by the Rev. J. S. M. Anderson, it was resolved, "That in consequence of the long magisterial and other public services of William Seymour, Esq., it was the opinion of this meeting that there should be presented to him some lasting testimonial of the esteem of the inhabitants of this town."

This just mark of respect was carried into effect by a subscription for a marble bust, placed on a pedestal in the Town Hall of Brighton, with the following inscription:—

"William Seymour, whose zeal and watchfulness, whose ripe experience and knowledge, devoted, in the closing years of a long and active life, to the welfare of this town and county, won for him the respect and love of those who witnessed them, and who desire thus to testify their sense of his services. 1850."

We have been glad thus to record the merits of this eminent Solicitor, as well from personal respect to his memory, as on account of the illustration it affords of the peculiar fitness of experienced solicitors for the magisterial bench; and whilst it is true that many solicitors on their retirement from the practice of their profession are immediately placed in the commission of the peace, we conceive that the public should not be deprived of the benefit of their services during their actual practice, provided neither they nor their partners are engaged in business before their brother magistrates.

The following are some of the many important improvements which Mr. Seymour, as a magistrate, either proposed or to which he gave his zealous support.

In 1830, Brighton and some adjoining parishes were created, by an order of sessions, a separate division for petty sessions, under the 9 Geo. 4, c. 45. And the Brighton division was made a separate division for assessed taxes, at a general meeting held at Lewes, whereby the inhabitants of the Brighton division (more than 40,000) were saved the trouble of going to Lewes on appeals or other tax business.

In 1831, a new assessment of the county rate was obtained for the eastern division, no new assessment having been made since the termination of the war in 1815. And an agenda of all business intended or required to be transacted at each quarter sessions, was ordered to be prepared, printed, and circulated among the magistrates, previously to each sessions, and a printed calendar of the prisoners, and of the verdicts and sentences after the sessions.

In 1832, Mr. Seymour, Mr. Gear, and Captain Richardson visited Hورشam Gaol, and made a report for its improvement, which was printed and circulated by the sessions, and afterwards adopted; and an elaborate return of all pauper lunatics in the county, in classes, was obtained.

In 1833, intermediate sessions were established, and have been ever since continued. And the employment of prisoners in the Lewes House of Correction in manufacture was introduced from the House of Correction at Petworth and other places.



A building was also ordered to be erected in Lewes House of Correction, for female prisoners, thereby wholly separating them from the male prisoners and officers; including a kitchen and wash-house. A chapel was also ordered to be built for all prisoners, and an additional wing for the male prisoners, in the male side of the prison.

In 1834 and thenceforward, the transaction of business on the county-day was made an open court, and reporters were admitted and accommodated.

In 1835, an order was made for discontinuing commitments of criminal prisoners to Horsham Gaol. In the same year, an act was passed for effecting greater uniformity of practice in the government of prisons, and for appointing inspectors. Mr. Seymour was examined before a Committee of the House of Lords on this bill. He was also consulted by Mr. Hope Maclean respecting the poor laws, and his opinions are published in Mr. Maclean's Report, particularly as to pauper appeals, bastardy, and emigration. Mr. Seymour likewise corresponded at great length with the county-rate commissioners, as appears by their printed report.

In 1837 a diary table of business done at petty sessions was established, and directed to be returned to quarter sessions. An arrangement was made for contracting for the purchase of almost everything supplied for the Lewes House of Correction, and a finance committee was appointed; and various improvements were effected in the construction of the court, for the accommodation of juries and witnesses. The seats in the nisi prius court were greatly increased; the gallery in the criminal court was appropriated for witnesses, and separate cells were built under the courts for the reception of prisoners awaiting their trial (preventing contamination), and other important improvements were made in the county hall.

In 1839, on the appointment of a new Treasurer for the Eastern Division, important regulations for his office were adopted, and parishes were allowed to pay their county rate by two payments, instead of the whole at once. The Constabulary Force Act was taken into consideration by the magistrates in quarter sessions; and Mr. Seymour obtained in almost every year valuable Parliamentary returns relating to the duties of justices of the Peace.

## LAW OF ATTORNEYS AND SOLICITORS.

### DELIVERY UP TO CLIENT OF ORIGINAL LETTERS AND COPIES OF LETTERS WRITTEN BY SOLICITOR.

It appeared that Mrs. Lowe employed Mr. Thomson as her solicitor, from July, 1853, to February, 1855, when she discharged him, and retained other solicitors. Mr. Thomson's bill of costs being paid, he handed over to the new solicitors the deeds, books, papers, and writings belonging to Mrs. Lowe, except the original letters addressed to, and received by him as her solicitor, and relating exclusively to her business, and except copies of letters written by him as her solicitor, which copies had been made by him, and had not been charged for in his bill of costs. These he declined to deliver up, but offered to furnish copies of both classes of letters at her expense. Mrs. Lowe thereupon presented this petition for the de-

livery up of these letters and copies, which she alleged were important to her interests.

The *Master of the Rolls* said: "I am at present of opinion that the copies of letters written by the solicitor, and copied in his own letter-book, cannot be ordered to be given up, and that, if the client wants copies of them, she must pay for them; but as to the original letters, I shall reserve my judgment."

His *Honour*, on a future day, said: "The copies made by the solicitor of letters written by him to third parties, on his client's business, were made for his own benefit and protection, and were neither charged for by him, nor paid for by his client. If, therefore, the client requires copies, she can only have them on the terms of paying for them.

"No question arises as to the letters from the client to her solicitor; but my impression is, that the solicitor would be entitled to retain them.

"As to the letters written to the solicitor by third parties, relating exclusively to the client's business, I think that they, having been received by the solicitor as the agent of the client, she is entitled to have them delivered up to her. My decision is in no way founded on any questions of copyright or qualified ownership."

*In re Thomson*, 20 Beav. 545.

## LAW OF COSTS.

### OF PARTNER, ALTHOUGH CLAIM FAILS. OF RESPONDENT UNNECESSARILY SERVED.

A PARTNER, claiming a fund under the Trustee Relief Act, 10 & 11 Vic. c. 96, was allowed his costs, although his claim failed. According to the present practice, and the cases of *Day v. Croft*, 19 Beav. 518, and *in re Hertford Charity*, there cited, a respondent unnecessarily served with a petition is not as a matter of course entitled to his costs of appearing. *In re Bissell's Will*, 2 Kay and J. 369.

### OF PARTIES ON SPECIAL CASE.

WITH respect to the costs upon a special case, there should either be some arrangement between the parties, or there should be a question in the case out of what fund they ought to come.

The Court has no jurisdiction to order the costs of all parties to such case to be paid unless there is a fund in Court.

*Blinston v. Warburton*, 2 Kay and J. 400.

## JUDGMENTS EXECUTION BILL.

THE Scottish Trade Protection Society, Edinburgh, comprising upwards of thirteen hundred and fifty members—bankers, merchants, and traders,—have petitioned the House of Commons in favor of this Bill, stating that they have considered with great satisfaction the Bill introduced by Mr. Crauford and Mr. Dunlop, intitled "A Bill to enable execution to issue in any part of the United Kingdom under judgments or decrees obtained in certain courts of record in England, Scotland, or Ireland," commonly called "The Judgments Execution Bill." They are of opinion that the present system of procedure in the Courts of Law in England, Ireland, and Scotland—which requires a creditor who has obtained judgment against a debtor in one country within the United Kingdom to raise a new action in the courts of any of the other countries of the said

kingdom to which his debtor may remove or possess property, before such judgment can be put in force—is injurious to trade and commerce, and the cause of great loss to the mercantile public generally.

The petitioners venture to suggest that the Judgments Execution Bill is calculated to remedy the existing evils, and to prepare the way for the gradual assimilation of the mercantile laws of the United Kingdom.

The petitioners therefore trust that the House will be pleased to pass the Bill into a law, with such alterations or additions as may seem fit.

## ENCROACHMENTS ON THE PROFESSION.

We have just received one of the circulars issued by a new association of unqualified persons, assuming to act in the collection of debts, and charging the usual solicitor's fee for writing letters before the commencement of an action. The following is a copy:—

"The British Mercantile Agency for reciprocating information tending to guard against bad debts, for relieving the subscriber from all trouble and expense when bad debts occur, and for recovering debts at no expense to the Subscriber.

"London: 18, Old Jewry Chambers.

"Manchester: 14, St. Ann's Square.

"Liverpool: 10, South John Street."

"London, 1856.

"Mr. A. B.,

"Sir,—Messrs. C. D. & Co. being subscribers to this agency, have placed in our hands their account against you, amounting to £ , which we are requested to apply for, *together with 5s., our charges for application, postages, &c., &c.*

"We may also inform you that this agency consists of an association of a very considerable number of the wholesale [*some trade as person to whom letter is addressed*] in [*Liverpool*] and other places, to whom the nature of this communication will be made known, unless it is promptly responded to. The propriety of doing so will be obvious to you, and we shall wait until next, the inst., when, unless a remittance or some satisfactory arrangement is made, peremptory proceedings will be forthwith commenced against you.

"This application is in lieu of the usual solicitor's letter.

"I am,

"Your obedient servant,

"G. CASTER,

"General Manager."

## OFFICIAL SALARIES.

### DUTIES OF THE COMMON LAW MASTERS.

[From a Correspondent].

THE observations in the "LEGAL OBSERVER" of 5th July, as to the duties of the Common Law Masters, certainly do not overstate those duties. The references imposed upon them by the Common Law Procedure Act of 1854, have most materially increased both their duties and their responsibility. Their hours of attendance, partly to suit the con-

venience of the members of the bar, partly in order that those references may not interfere with the ordinary business of the office, are extended from three till frequently five or six o'clock; and, after those hours of attendance, they have to read over and consider the evidence taken, and to frame their awards. It may be well said that "they have some reason to complain"—that, while the salaries of other and inferior officers should be raised, theirs should be continued at the same amount £1,200, as that fixed for less extensive and less important duties, and that they should be left without the retiring pension enjoyed by almost all public officers of similar grades.

## UNITED LAW CLERKS' SOCIETY.

### THE ANNIVERSARY FESTIVAL.

THE twenty-fourth anniversary festival of this society took place on Tuesday, the 17th of June last, at the Freemasons Tavern. *Roundell Palmer*, Esq., Q.C., M.P., presided, and was supported by the Lord Justice Knight Bruce, the Lord Justice Turner, Mr. Digby Seymour, Mr. Serjeant Ballantine, Mr. Serjeant Parry, Mr. Burrows, Mr. Under-Sheriff Rose, Mr. Calthrop, Mr. Cochrane, Mr. Smale, Mr. Toker, Mr. J. Cooke, Mr. Turner, Mr. Bayford, Mr. Coulthard, Mr. Parkinson, Mr. Palmer, and other gentlemen. About 250 sat down to dinner.

The *Chairman* said the first duty which he had to discharge that evening was to propose the health of her Most Gracious Majesty the Queen, a toast which it was needless to say every assembly of Englishmen always receives with the utmost satisfaction, not only on account of that loyalty which all bear to our sovereign, whoever that sovereign might be, but more especially on account of the personal qualities which so prominently distinguish her present majesty—qualities which are such that whatever may be the character of the assembly at which her health may be proposed, that assembly was sure to recognise in her some peculiar merit and virtue commending her to their particular affections, in addition to those which earn the respect and loyalty of her subjects at large. Now in that assembly one could not but recollect that if there be anything which distinguishes our country among all the other countries in the world, it was that we are a nation governed by law; that truth was as fit to be remembered in that assembly as anywhere else; and if ever there was a sovereign who was the personification of that truth, and who regulated and governed herself by it, while on the other hand, in every act of her private life she sets that example to all her subjects which the first person in the land ought to do,—we never could exceed the actual instance of it which we have in her majesty who now fills the throne. Therefore, he did not feel a doubt that without more words they would be well content to join in drinking with enthusiasm the health of her Majesty.

The toast was responded to with every manifestation of loyalty.

The *Chairman* said the toast they had just drunk was always followed by another which they should drink, he would not say with equal pleasure, but certainly with a degree of pleasure which would be rendered from the heart,—he meant the health of her Majesty's consort, his Royal Highness Prince

Albert, Albert Prince of Wales, and the rest of the royal family. No one could doubt that her Majesty receives from her royal consort the most valuable assistance in preserving the dignity and discharging the duties of her station in that perfect manner to which they had just borne their testimony and their homage. His Royal Highness knew the difficulties of his duties, and what were the proprieties of his most peculiar and difficult position not less well than her Majesty knew the duties of hers, and they presented as remarkable a combination of private and public virtues as it would be possible if we were to ransack the pages of history to discover. Around them were growing up a family who year by year become more interesting to the people of this country, and who, as we begin to know something of their character, justify the hope that they will prove to be worthy in every respect of their royal parents. They knew that the eldest of that family was, if report spoke the truth, as he believed it did, destined to bear to another country closely united by ties of both political and religious union with our own, the fruits of the education which she has received; and he thought those who had been able to observe the speaking countenance, and the character and genius which is discernible in that countenance, of the illustrious princess to whom he had referred, could not doubt that she will be a blessing to another country—as great a blessing as her royal mother has been to ours. He called upon them to drink with enthusiasm the toast he had proposed.

The toast was drank with all the honours.

The *Chairman*, in proposing the toast of the "Army and Navy," said they were not a warlike body; their duty was to cultivate the arts of peace; but nevertheless they were not unable to sympathise with and admire the gallant actions of our countrymen, who are called upon to use the sword instead of the pen, and they were able to recognise with the rest of the people the great service they had done to their country. Upon the last occasion they met in that hall, to celebrate the anniversary of the United Law Clerks' Society, they would recollect that the toast he was then going to propose was proposed under very different circumstances. At that time an army as gallant and brave as ever took the field from this or any other country, was encountering toils and perils with unheard of constancy and fortitude—an army which as often as it had been engaged in the field had won imperishable laurels, and he would venture to say, honours brighter still by the noble, the Christian, the patient fortitude with which it endured hardships more difficult to encounter than anything which could come from the enemy's sword. On that occasion, hopeful of success, yet still knowing that the issue of events was in the hands of God, we drank the health of that noble army and of the navy which had supported its operations with energy and zeal. Now, they had to thank that army for having obtained for us, under God's providence, a happy and glorious peace. He hoped, indeed he was sure, that the achievements of the army and navy would never be forgotten in the history of this country. The longer this country endures, the more they will be appreciated, and those imperfections upon which too much criticism had been bestowed, would vanish when we have time and opportunity to reflect upon the difficulties to be contended with, and the noble spirit and perfect success with which those difficulties were encountered. He believed that from Lord Raglan, the commander of that army, who stood his ground when men of un-

sullied reputation who had received the well-merited applause of their country thought themselves justified in retiring—Lord Raglan was firm and patient then as he was firm and patient afterwards, when criticism at home was sapping his health, and taking away the lustre from his cheeks—from Lord Raglan down to the lowest soldier under his command, there was but one spirit and one meed of praise to be bestowed, and he was sure they would all join with him in the most cordial manner in commemorating their great achievements, and in the hope that, under God's providence, the peace which they had so nobly won for us may be enduring.

The *Secretary* (Mr. Rogers) read the annual report, of which we presented our readers with a copy in a previous number (p. 164, *ante*).

The *Chairman*, in proposing the toast of the evening, "Prosperity to the United Law Clerks' Society," said the natural sequel of the report which they had just heard read was the toast which he had to propose; but he should preface that toast by some observations upon the very interesting occasion on which they were met. He looked upon that society as interesting to every member of the profession in particular, and also of importance to the profession at large, and to the interests which are entrusted to the care of that profession. If they for a moment looked to those who were not the most directly interested in the society—he meant the bench, the bar, and the solicitors—who gave their assistance and support to it upon that and other similar occasions, he did not think they would at all be at a loss to find abundant reasons why they should do so, whether they looked to their interests—although he knew that was not really the prevailing motive—or whether they looked to the duty they owed to their common profession or to the feeling of personal gratitude which they must bear, and ought to bear, to those who were so closely bound up with themselves. Now, as a member of the bar, and representing the bar on that occasion, it was natural that he should remember not only the clerks of solicitors, but also of barristers, who are interested in this society; and he should be ashamed of himself, indeed, if on any occasion he were slow to bear testimony to the deep debt of gratitude that the members of the bar owed to the clerks who assisted them in the performance of their duties. To say that it would be impossible to discharge those duties without their assistance would be to say that which was obvious; but if they did not assist them in the discharge of those duties with zeal and attachment, and also with integrity and uprightness, those services would be of little worth. He had no doubt that the experience of others was like his own, and certainly his experience was that the assistance and the services which that most estimable body of men rendered was given with a fidelity and affection, which no tie either of blood or friendship could surpass; and which, unless they were wholly deficient of gratitude, must make them feel bound to them by ties hardly worth being distinguished from those of blood or friendship. If they were not ready to give their support to a society or institution which in any way tended to benefit the class he had alluded to, they would be the most ungrateful of men. The same thing, of course, must be said by solicitors with respect to their clerks and the discharge of their duties, which in some respects might even be said to be of higher importance than those of barristers' clerks, because on a multitude of

occasions the clerks have often to do the solicitor's own work—they are required on his behalf to possess skill, judgment, professional knowledge, discretion, and all those faculties, the presence or absence of which makes the difference between a useful and a useless, a successful or a failing man. Then, if they recollected also to what a great extent the honour of the profession is in their hands—how, if there were any failure or want of honour on their part, their masters and their masters' interests might be involved, they saw still more how completely all classes of the profession were bound together; and he must say that he contemplated with admiration the manner in which both those classes, clerks of barristers, and the clerks of solicitors, discharged their duties. Their intelligence as a body was equal to the demand upon it, and he could hardly say more, for a greater demand could perhaps scarcely be made upon the intelligence of any body of men. As a general rule, their discretion and their deportment was deserving of the highest praise; and if he spoke of their honesty, reflecting, as he did, that the whole income of the bar pass through the hands of their clerks, and were in a sense dependent upon the way in which they discharged their duties, and when he remembered how rare indeed it was that a whisper of a lapse in that respect went abroad, he could not but repeat that he looked with admiration upon their conduct generally. Now, that a body of men capable of discharging their duties with uprightness and fidelity should be maintained, all would understand to be of the utmost importance both to every branch of the profession and to the duties which the profession in general have to discharge. They all knew to what a very great extent both the pecuniary interests and often the domestic peace and the honour of multitudes of persons are entrusted to the profession to which they belonged; and if that profession in any of its branches were to fail in due sense of its own honour and dignity, it would be difficult to estimate the amount of discredit which might be brought upon the administration of justice in general, and of course upon the profession as its administrators. In all these respects, therefore, they all—clerks, solicitors, barristers and judges—had a common interest, and one which could not be exaggerated, in supporting an institution which tends to maintain the uprightness, the honour, the dignity, and the independence of that most numerous, and not less important, branch of the profession—the clerks both of barristers and solicitors. The only thing, then, which remained for him to observe upon was the tendency of that society to accomplish those objects. The two qualities requisite in such a society as that were these—first, that it should be a resource which those poorer members of the profession who, without their own fault, are deprived of the means of acquiring an independent subsistence, may look to with certainty and confidence as their hope against the casualties of life; and secondly, that they may not look to it with such certainty or in such confidence as would tend to impair in them the principles of providence, independence or integrity. That society furnished both those requisites. It was a resource for those members of the profession who, through illness, infirmity, or old age, or the inevitable accidents of life, are thrown upon the world without the means of obtaining an honourable subsistence, for it was a fact that the society, having been in existence now for twenty-four years, had never, in a single instance, failed to meet the

demands made upon its resources. In addition to that, it had, with a generosity and a spirit of charitable sympathy worthy of its members, been enabled to extend large annual assistance to other distressed members of the profession whose circumstances had not enabled them to become members. In all these respects, therefore, it answered the obvious purposes of such an institution. But did it also answer the condition of guarding against improvidence? Assuredly it did. The very fact which had been mentioned in the report that the recipients of bounty owing to illness from this society during the year had limited their demands to so moderate a sum as £187, and that there are now only eight life annuitants depending upon the society—those two facts spoke far more forcibly than anything he could say to show the caution and the care with which the society limited its assistance to those members who are deserving and proper persons to receive that help without being induced to rely upon it in a manner injurious to their independence; and he (the chairman) owned that he thought that any member of that society might look with pride upon the circumstance that so few of its members are reduced from year to year to the necessity of having to depend upon its fund. They might rejoice that there was such a resource open to them, but they might rejoice still more that it tempted none of them to leave the straight road of the profession to depend upon such resources. But let them not imagine that the funds of the society were in excess, or that they did not stand in need of continuing and increased support. The contribution of the members amounted during the year to £1,322—a considerable increase upon the last year. That was a good sign of the increasing support which the society met from the class of men directly interested in it; but when they looked to the number of that class, they saw there was still room for a very large increasing support, and he trusted and believed that that support would cordially be given. He found that the managers of the society had, with a laudable foresight, made a provision against the difficulties they will naturally have to contend with from the increasing age and infirmity of original members, and that they had now savings invested to the amount of £18,000. Now that was not by any means too much, if they bore in mind that the present life annuitants required about half that amount to support them, and that as the society increased in years its number of members requiring life annuities would increase also. The life annuitants now on the fund were, with a single exception, persons who had been reduced to that necessity by illness, and the only exception is the last addition to the number—a gentleman who, after fifty-years' hard service, had well earned the retiring pension which he received from the society. He did not know that there was anything more that he need say except to express the great satisfaction it gave him, since they had thought him worthy of such an honour, to take the chair on that occasion. He could truly say that he thought there were many others of higher standing in the law, who, on many accounts, could have occupied that honourable post with greater advantage to the society than he could, but still he could safely say that there was none who could have done so with a more thorough or complete gratification to himself than he had experienced. He called upon them to drink with enthusiasm the toast he had proposed.

*Mr. Serjeant Ballantine* wished that the duty of proposing the next toast had fallen into hands of

some one more capable of doing it justice. It was one, however, which he had much pleasure in proposing, as he was sure everybody present would respond to it with the utmost satisfaction. When he said it was the health of the Lord Chancellor and the other patrons of the society, he was sure it would be received with that acclamation which did not result from any desire whatever of exhibiting mere feelings, but from real gratitude for the association that existed between them and the members of that society, and for the means they had afforded to the gentlemen who were there present in mixing with them upon terms, he would not say of equality, but at all events upon terms at which everybody present must feel gratified. He must be pardoned, indeed he was sure that he need hardly claim their pardon, for naming one person who was among the list of patrons; he alluded to the nobleman who stood second upon the list, and who would form no unimportant feature in the page of history—he meant that great and noble old man, Lord Lyndhurst, a name that not only finds a response in the heart of every lawyer—that sort of response that arises from a feeling how deeply they were all honoured by being members of the same profession that he himself had graced, but which was held in esteem throughout all Europe; indeed, he might say throughout the civilised world. He was now, at a period of his life when most men would have yielded to inactivity, exhibiting energies for the benefit of his fellow creatures, and for the cause of justice and humanity; and they found him there, as everywhere else, giving that assistance which he had given through life to all who required it. The very excellent speech—one of the most able he had ever heard at a public meeting—indeed, he might say elsewhere—that he had listened to with so much delight from their excellent and learned chairman, deprived him of almost every topic in allusion to the toast he had to propose. The efficient manner in which he had alluded to the mode in which the members of that society performed their duties, and the interest which subsisted between them and their employers, and which he (Mr. Serjeant Ballantine) trusted would ever remain, as at present, almost rendered it unnecessary for him to allude to the duties and the position of those whose names he had to propose. Suffice it to say, that amongst those names was one who held no mean place not only in their profession but also in the world at large. Men of intellect, men of talent, of industry, and of power had raised themselves to a rank which all admired, and which many there present, he hoped, looked up to, not only with admiration, but with some sort of hope that it might be their fate, as it had been that of many others in their position, to reach a station equally honourable and exalted. As far as his own thorough conviction went, it was from that association of mutual respect and esteem between men who had raised themselves to eminence and men who were looking forward to it, that the greatest and mightiest efforts arose, and the greatest and happiest results were attained. From his heart, and from a feeling of consideration and respect, and from the entire approval of every single word that the learned chairman had said, he would add his humble wishes for their success; might they be as successful, as happy, and as prosperous as he believed their conduct deserved that they should be. He had only a word more to say,—the name that he had to join to the toast was Lord Justice Knight Bruce. [His lordship's name was received with an outburst of applause.] He (Mr. Serjeant Ballantine)

knew very well that those who were members of the same profession as himself would respond with enthusiasm to the name he had had the honour to mention, than whom there was no one he would rather hold up to the admiration and imitation of the younger branches of the profession. He would not allude to the numerous talents he undoubtedly possessed, but he would allude to the unshrinking energy and devoted industry which he had shewn from his earliest days in the pursuit of his profession, and say that never were honours more justly earned and properly bestowed than upon the noble and learned lord whose name he had coupled with the toast.

The *Lord Justice Knight Bruce*, in responding to the toast, said,—“On behalf of those whom you have honoured by the last toast, allow me to offer cordially and respectfully many acknowledgments and thanks for the kind—the very kind manner in which it has been proposed by the learned Serjeant and received by you. If good wishes to the institution whose anniversary we are celebrating, and an anxious desire for its success, can give a title to that honour, that title belongs to all included in it, and I hope to none less than myself; and for the judges in particular let me add the assurance that they approve greatly, and think highly, of the institution, and consider the manifestation of that opinion as well becoming their important office. Gentlemen, my cordial participation in that sentiment may render me less unworthy for asking you to do honour to the name of a gentleman to whom the institution is this day especially under much obligation. I wish to give you the health of a man whose course of public life has for some years been under my observation—at the outset with good omen, onward with increasing interest in its great advance, less with the pleasure of vindicating the prophecy, than with that of rejoicing friendship. To predict indeed what was to come required no extraordinary power of foresight, for

“The good courser on the plain, ere yet he starts, is known;  
And does at the goal but gain what all have deemed he would.”

Gentlemen, the name of our chairman may authorise me to repeat a frequent remark, that this institution is doubly interested in having for the president at each of its anniversaries a man of high character and distinction professionally as well as privately, for it marks the estimation in which those eminent in the administration of justice hold the purposes which bring us together this night—purposes upon the value or importance of which, after the able and effective observations that have been in so business-like, as well as eloquent a manner, made to you by my honourable friend at my left and by the learned Serjeant, it would be superfluous indeed for me to dilate. In saying, then, that the chief seat here this evening has been filled in a manner the most advantageous, I say that which I am sure you will all assent to. We all justly feel indebted to my honourable friend—a debt, I was about to say, incapable of increase, and so at present it is; yet how difficult for a man to be satisfied with the amount of what he owes to an eligible creditor, and there has passed across my mind the possibility of augmentation, in this instance, upon a future event, which I will not now further allude to. I may, however, permit myself the general remark that a man in high office would not fill the chair at one of these anniversaries the worse for having graced it most at an earlier period of a useful, an exemplary, an honourable and

a distinguished life. In the meantime, gentlemen, let us drink the health and prosperity of Mr. Roundell Palmer.

The *Chairman*.—I feel it extremely difficult worthily to express my sense of the kindness which has marked the observations of my most respected friend the Lord Justice, and your manner of receiving them. I am willing to believe his friendship for me is real, and that at least is a very great pleasure, and I also think that you appreciate the right good will with which I have endeavoured to serve you upon this occasion. Whatever future may be in store for me—and as to that I am well content and thankful for what has been given to me; I desire no more, and have no ambition for the future,—but my interest in this society, whatever my future may be, is not likely to decrease.

Mr. *Digby Seymour* said he had been asked to propose a toast, and he considered it a compliment, as it enabled him to stand up, and in his own person express the opinion he entertained of the importance of that institution, and of its inherent merits. He confessed he had sat with great pleasure and delight during the time they had been assembled that evening. Never had an association met under more favourable circumstances. On one side of the hall they were presided over by dignitaries of the law, who shed a lustre around them, and on the other side of the hall there was indeed a different but another lustre looking down upon them from the gallery, encouraging them to perseverance. He had been asked to propose the health of the Bench, the Bar, and the Profession. With regard to the Bench, he was sure he should be excused for not saying much. The subject was so large and of such importance that he should perhaps be treating it with more respect by not dwelling long upon it. But in connection with the Bench there was one great name which ought not to be forgotten. He alluded to the memorable name of Lord Truro. He (Mr. Seymour) had the good fortune, although then young, to have the acquaintance of Sir Thomas Wilde when he was at the Bar, and he could only say that his opinion of that illustrious man was that he carried from the ranks of life from which he rose that humble spirit and those high acquirements which always assure to their professors an adequate reward. Passing, as he did, through the various ranks of the profession, he might justly be held up as an encouragement to those who belonged to that association to remind them of the bright rewards which hold themselves out to those who persevere in a course of industry and integrity. He might say, with regard to the Bar and the profession generally, that it was impossible to form a proper estimate of the constitutional history of our country without being acquainted with our great constitutional lawyers. The reforms of our institutions had been the growth and development of great characters in the annals of the Bar. He would only allude to Sir Samuel Romilly and that other great and brilliant genius, Lord Brougham, in confirmation of that remark. In connection with the toast he had the honour to propose, he would mention the name of Mr. Serjeant Parry. He had known him long, and there was no man more fitted to respond to that toast on the part of the Bar than he was. He had lately had the well-merited honours which properly attend high professional success bestowed upon him; and, if his past career was to be an index to his future, he would not prove unworthy of the honours which had been conferred upon him. In conclusion, when he viewed

the character and conduct of the distinguished gentleman who filled the chair, and those who supported him, and when he looked at the character of the profession generally, he was filled with hope that, be the fate of this country what it may, their common profession will always maintain and support the purity of the Bench, the independence of the Bar, and the honour of the whole body.

Mr. *Serjeant Parry* said in default of many who might have been present that evening a duty had been cast upon him, which he certainly did not perform reluctantly, because he should be very sorry to shrink from any duty which devolved upon him, especially upon an occasion like that, but which he approached with a diffidence which was certainly not his peculiarity, but which he believed to be a universal and predominant quality of the profession to which he had the honour to belong. It would be ridiculous to suppose that he could adequately respond to the toast of the bench, the bar and the profession; certainly he knew something of the bench, and he knew something of the bar, and of all the branches of the profession. This he would say that it would be impossible to select a body of men more capable of rendering genuine homage to the judges of this country both in equity and at common law than those by whom he was surrounded. There was not a man there present, from the humblest clerk who had taken out a summons to strike out a plea before a judge at chambers, to the mightiest advocate who had ever pleaded in Westminster Hall—there was not a man from one to the other who was not capable of estimating the conduct of the judges of the land and bearing to them, what, he was sure, those who were present that evening felt their high testimony of sincere regard and admiration. It was now a trite saying that the judges perform their duty. He did not believe, however, that we attach sufficient importance to what is going on silently amongst us from day to day. We read the speech of a great orator in the House of Commons, with interest and delight. We hear of some great forensic triumph at the bar: we hear of some great and heroic deed of arms, and progress of the arts of peace by which the world is governed; but he considered that one of the greatest influences at work around us was the silent day by day influence of the administration of justice by the judges of the land. As regarded the bar, he should say very little indeed. In the history of our country it had rendered some services. It should be recollected that in every branch of the profession there is daily going on, though, undoubtedly, there might be instances of misconduct and impropriety, but where was the profession that was free from it—even the most sacred, he would say emphatically that day by day there are men in all branches of the profession actively engaged in the assertion of some right or other, and that many families now in affluence owe their affluence to the spirit and determination of some branch of the profession. He need hardly remind them that there were passages in the history of this country, shewing that some of the most sacred liberties that have ever been procured for the people have been won by men belonging to the profession. He would say nothing more. He would only express the great pleasure he experienced at being present that evening; he had been for some years a subscriber to the society, but he had only that evening been present for the first time at the anniversary festival. He considered it a most

useful and estimable society, for it encouraged what he believed to be the element of successful enterprises in this country—the spirit of self-dependence, which induced a man to rely upon himself through life, and to make for himself an independent position, than which there was no greater blessing. At the same time it gave assistance to those who required it in a manner in which no one need be ashamed to accept it.

*Mr. Steere* proposed the health of the trustees. In an important society like that of which there were so many members, and so large a fund to be taken charge of, it was necessary to make a judicious selection of gentlemen to fill the responsible office of trustees. The society had been most happy in that selection, and they were deeply indebted to the gentlemen who had filled that office for their services during the past year. He was sure they would all join with him in making their best acknowledgments to the trustees of that society for the discharge of the duties that had been imposed upon them up to the present hour, and wishing that they might long live to perform those duties.

*The Chairman* said his learned friend the Recorder of Newcastle had justly said that, that meeting had been peculiarly graced by the presence of the ladies, who had been so kind as to give their attendance at the other end of the room. But it needed not their presence to make them feel the obligations which they owed to them, and to express their sense of those obligations on such an occasion as that. He was sure that they all felt with him that it was no idle compliment which they paid to the ladies, by proposing their health on such an occasion. All then present might be divided into two classes: those who had been married and those who wished to be married. Those who wished to be so would do well to learn from those who had been; and speaking for that class he could say that if it were not for the ladies he did not know where would be the value of all their toil, it was they who sweetened all their labours, and cheered them on in the path of honour and duty.

The subscriptions in aid of the society announced during the evening exceeded £350.

## NOTES OF THE WEEK.

### SHERIFFS OF LONDON AND MIDDLESEX.

J. J. Mechi, Esq., Frederick Keats, Esq.

### UNDERSHERIFFS.

Alexander Croesley, Esq., solicitor, of 34, Lombard-

street, James Anderton, Esq., solicitor, of New Bridge-street.

### LAW APPOINTMENTS.

Mr. Justice Erle, the Recorder of London, Sir F. Theisger, and Sir Thomas Phillips, have become four of the eight trustees of the Godolphin School at Hammersmith, which is to be opened in August, in accordance with a scheme sanctioned by the Court of Chancery.

The Queen has been pleased to direct letters patent to be passed under the great seal, granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland, unto *Valentine Fleming, Esq.*, Chief Justice of the Supreme Court of Tasmania. From the *London Gazette* of 4th July.

Mr. John Neve junior, solicitor, of Wolverhampton, has been appointed a notary public, with a general district faculty to practice in Wolverhampton, and within a circuit of ten miles thereof.

### ROLLS SITTINGS

On Friday the 11th, Friday the 18th, and Friday the 25th days of July, the Master of the Rolls will take the further directions and further considerations set down since the date of the last printed list, which are not accompanied with exceptions or motions to vary certificate.

### NEW CHARGES ON PUBLIC EXCHEQUER BY COURT COURTS BILL.

The charges proposed by this bill to be placed on the public purse are as follows:—

To be paid out of the consolidated fund, the judges' salaries amounting to	£77,700
To be paid out of grants of Parliament, the travelling expenses of the judges	13,000
And the expenses now paid out of the general fund, amounting to (independently of building or providing new court-houses)	49,300
	140,000
Add to this, estimated difference between the fees proposed to be taken and the salaries proposed to be paid to the clerks and high bailiffs	80,000

Total annual charge . 170,000

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*In re Leslie, ex parte Leslie.* June 27, 1856.

BANKRUPT LAW CONSOLIDATION ACT.—FRAUD.—REPRESENTATION OF BEING TRADER.—CERTIFICATE.

A bankrupt obtained an advance from an insurance company on the representation that it was required for the extension of his business of a tailor, which he had carried on for five years, at No. 60, Conduit-street. It appeared that he resided with his father, a tailor at that place, and never was in business on his own account. Part of the loan he handed to his brother, and retained the rest: Held, that he could

not be heard to say he was not a trader, and his certificate having been refused for such fraud, an appeal from such refusal was dismissed.

This was an appeal from the decision of Mr. Commissioner Evans, refusing this bankrupt his certificate. It appeared that the bankrupt had obtained a loan from the Travellers' and Marine Insurance Company for £1000, on the representation that he had been in business as a tailor for five years, at No. 60, Conduit-street, and that the loan was for the extension of his business. The bankrupt handed his brother £600, part of the loan, and did not apply any part of the remaining £400 as stated. It also

appeared that the bankrupt was never in business on his own account, but lived with his father, who was a tailor at the address he gave. He also described himself as a tailor in the bond, which was also given as a security for the advance.

By the 12 & 13 Vict. c. 106, s. 198, it is enacted that "forthwith, after the bankrupt shall have passed his last examination, the Court shall appoint a public sitting for the allowance of his certificate, &c.; and the Court, having regard to the conformity of the bankrupt to the law of bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require." And by s. 256, that "if, at the sitting appointed for the last examination of any bankrupt, or at any adjournment thereof, it shall appear to the Court that the bankrupt has committed any of the offences hereinafter enumerated, the Court shall refuse to grant the bankrupt any further protection from arrest; and if at any sitting or adjourned sitting for the allowance of the certificate of any bankrupt, it shall appear that he has committed any of such offences, the Court shall refuse to grant such certificate, or shall suspend the same for such time as it shall think fit, and shall in like manner refuse to grant the bankrupt any further protection:" &c.—"If the bankrupt shall have contracted any of his debts by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors."—"If the bankrupt shall, within six months next preceding the issuing of the fiat, or the filing of the petition for adjudication of bankruptcy, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any suit for the recovery of any debt or demand provable under his bankruptcy, or shall be indebted in costs incurred in any action or suit so vexatiously brought or defended."

*Swanston* and *Hoare*, in support; *Erskine* for the Insurance Company.

The *Lords Justices* (without calling on *Bacon* and *Bagley*, for the assignees, *contra*) said that a person carrying on the business of a tailor was within the bankrupt law, and that the appellant, having represented himself to be such, and having obtained the advance in question on the faith of such representation, could not now be allowed to state he was not such, in order to protect himself from the consequences of the transaction. The appeal would, therefore, be dismissed, with costs.

### Vice-Chancellor Kindersley.

*Lacon v. Allen.* July 3, 1856.

EQUITABLE MORTGAGE—DEPOSIT OF PORTION OF TITLE DEEDS—LIEN ON ESTATE.

Held, that a deposit of a portion of title deeds relating to an estate to secure an advance operates as an equitable mortgage, and gives a lien on such estate, except in so far as it is subject to any previous advance on the security of the other title deeds.

It appeared that a Mr. William Colk (who had since become a bankrupt) had deposited certain title deeds relating to property at North Walsham, with the plaintiffs, Messrs. Lacon and Co., bankers, of Yarmouth, to secure an advance. Some of the title

deeds relating to the same property were in the possession of mortgagees, against whom the plaintiffs filed this bill to redeem.

*Baily* and *T. C. Wright* for the plaintiffs; *Swanston* and *Gifford* for the assignees of the mortgagor; *Baggallay* for the mortgagees.

The *Vice-Chancellor* said that it was well settled that if A owed B money, and deposited the title deeds of his estate, it constituted an equitable mortgage, without any writing, notwithstanding the Statute of Frauds (29 Car. 2, c. 3), and gave a lien on the property. This doctrine had been acted on by Lord Eldon, and ever since. The question, however, in the present case, was whether a deposit of part of the title deeds constituted a good equitable mortgage? Suppose the owner of an estate had lost an important deed, perhaps the conveyance to himself, it could not be said that the deposit of all the rest was not sufficient. It was clear in the present case that the reason the mortgagor could not deposit the whole of the deeds was that they were in the possession of his mortgagees, subject to which alone the plaintiffs were entitled to redeem.

*Wordsworth v. Dayrell.* July 1, 1856.

HUSBAND AND WIFE—PAYMENT TO HUSBAND—CONSENT OF WIFE TAKEN IN COURT.

Order made, upon the consent of the wife being taken in Court, for the payment to her husband, on a petition presented by both, of a fund the value of an annuity left her to her sole and separate use.

This was a petition on behalf of a husband and wife for the payment out of Court to the former of a sum of £400, which was the amount of the value of an annuity bequeathed to the latter for her sole and separate use.

*Renshawe* in support cited *Milnes v. Busk*, 2 Ves. J. 498.

The *Vice-Chancellor* said that as the wife was in Court her consent would be taken to the payment to her husband, and this having been done, order accordingly.

### Vice-Chancellor Wood.

*Manby v. Bevicke.* July 8, 1856.

ENLARGING TIME FOR FILING REPLICATION—SECURITY FOR COSTS.

An order made on a plaintiff to give security for costs had not been complied with, and the appeal against such order had not been proceeded with due diligence. The plaintiff added another defendant, from whom answers to the interrogatories were sought: Held, that the plaintiff was not entitled to have the time enlarged for filing the replication, and a motion for that purpose was refused with costs, but without prejudice to enlarging the time for cross-examination.

This was a motion on behalf of the plaintiff to enlarge the time for filing the replication in this suit, on the ground that another defendant had been made a party, from whom answers to the interrogatories which had been filed were sought. It appeared that an order had been made on June 7 last on the plaintiff to give security for costs (reported ante p. 167), and that notice of appeal therefrom to the Lord Justice was given on June 23, but that the case had not yet come on for hearing.

*Rolt* and *C. Locock Webb* in support; *Toller contra*.

The *Vice-Chancellor* said that the suit was one of the most hostile character, and that the plaintiff had



absconded from his residence. An order directing him to give security for costs could not be enforced, and although he had appealed from that order he had not duly prosecuted the appeal. No further indulgence could therefore be granted, and the application would be refused with costs, but without prejudice to any question as to enlarging the time for cross-examining.

### Court of Queen's Bench.

*Coshill v. Wright.* April 28, July 3, 1856.  
INN KEEPER.—LOSS OF GUEST'S GOODS.—GROSS NEGLIGENCE.—QUESTION FOR JURY.

*It appeared that a guest at the defendant's inn had lost certain articles from his bedroom, of which he had left the door open. On the trial of an action to recover their amount, Held, that the presiding judge should have directed the jury as to the meaning of the words "gross negligence," in which case he directed them the defendant was not liable.*

*Held, that such words meant an absence of such ordinary care as a prudent man would have taken, or might be reasonably expected to take, of his own goods.*

This was a rule nisi to set aside the verdict for the plaintiff and for a new trial of this action, which was brought in the Manchester Borough Court to recover the value of a watch and ring which had been stolen from the plaintiff whilst at an inn kept by the defendant. It appeared that the plaintiff had gone to the inn at a late hour in the evening and that when he went to bed he had placed the articles in question on the dressing table, leaving the door of his bedroom open, and that they were afterwards discovered to have been stolen by a man who had been subsequently convicted of the robbery. The recorder of the borough court directed the jury that, in order to exempt the defendant from liability, it was necessary to shew gross negligence on the part of the plaintiff. This rule had been obtained on the ground that the recorder should have also directed the jury as to what constituted gross negligence.

*Wheeler and Kay* shewed cause against the rule, which was supported by *H. Hill.* *Cur. ad. vult.*

The Court said the questions raised by the plaintiff were, first, that the recorder should have directed the jury that he had not been guilty of negligence, and then as to what they were to understand by the words "gross negligence." But the Court could not say there was not some evidence of negligence on the plaintiff's part, on which the Recorder should have taken the opinion of the jury. He should, however, have given the jury information as to what they were to understand by the words "gross negligence." Their meaning was an absence of such ordinary care as a prudent man would have taken, or might be reasonably expected to take, of his own goods. The rule would be made absolute for a new trial.

### Queen's Bench Practice Court.

(*Coram Wightman, J.*)

*Loveless v. Richardson.* June 12, 1856.

COMMON LAW PROCEDURE ACT, 1852.—REVIVOR OF JUDGMENT MORE THAN TWENTY YEARS OLD.—AFFIDAVIT.—STATUTE OF LIMITATIONS.

*Held, that an affidavit in support of a rule nisi under the 15 § 16 Vict. c. 76, s. 134, to revive a judgment obtained more than twenty years since, should state that the exceptions of the statute of limitations, 3 § 4 W. 4, c. 27, s. 40, preventing the operation of the statute, had taken place.*

This was a rule nisi, under the 15 & 16 Vict. c. 76,

s. 134,\* on the executors of the defendant in this action, who died in 1822, to revive the judgment obtained therein against their testator, in Trinity Term, 1820.

*Gates* shewed cause on the ground that the affidavit in support omitted to allege any payment of a part of the principal money, or of interest, or that there was some acknowledgment in writing. He referred to the 3 & 4 W. 4, c. 27, s. 40, which enacts that "after the said 31st December, 1833, no action or suit or other proceedings shall be brought, to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon, or payable out of, any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same, shall have accrued to some person capable of giving a discharge for, or release of, the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable or his agent, to the persons entitled thereto or his agent; and in such case no such action, or suit, or proceedings shall be brought but within twenty years after such payment or acknowledgment, or the last of such payment or acknowledgment, if more than one was given."

*G. Francis* in support.

The Court said that the affidavit should have alleged circumstances to shew a *prima facie* right to the revivor. It should, therefore, have been shown that the exceptions of the statute had taken place, as the defendant's death, in 1822, raised a presumption that no payment of interest had been since made. The rule would, therefore, be discharged, but without costs.

### Common Pleas.

*Hirsch v. Coates.* June 12, 1856.

COMMON LAW PROCEDURE ACT, 1854.—ATTACHMENT OF DEBT ASSIGNED.

*Held, that a debt which had been assigned by the judgment debtor for the benefit of his creditors, before the judgment was obtained, cannot be attached under the 17 § 18 Vic., c. 125, s. 61, et seq.*

This was a rule nisi to rescind an order of Crowder, J., under the 17 & 18 Vic., c. 125, s. 61-3, attaching a debt due to the defendant from a Mr. Fountain. It appeared that the defendant had in April last executed an assignment for the benefit of his creditors, and that two days afterwards the present plaintiff had obtained judgment against him, upon which the order absolute now sought to be discharged was obtained.

*Brewer* shewed cause; *Unthank* in support.

The Court said that a judgment creditor was entitled to obtain an *ex parte* order attaching all debts due to his debtor, which order bound the same, after satisfying all equitable claims. Here on the garnishee being examined, and disputing his liability to pay the debt, on the ground he was bound in equity to pay the assignee, it was open, if this were denied to the judgment creditor to have obtained a *scire facias* on him to show cause why he should not pay, to which the plea of the assignment would have been good. The rule would therefore be made absolute to set aside the order absolute.

\* Which enacts that a "writ of revivor to revive a judgment less than ten years old, shall be allowed without any rule or order; if more than ten years old, not without a rule of Court or a Judge's order; nor, if more than fifteen, without a rule to shew cause."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, JULY 19, 1856.

### APPROACHING END OF THE SESSION.

#### BILLS POSTPONED.

It was lately reported in the public journals, with some confidence, that the present session of Parliament would terminate on the 24th instant; but we think it is impracticable to dispose of the business before the House of Commons in less than ten days or a fortnight from this time. We shall briefly review the measures which have been already postponed. Of the remaining bills several, we believe, will yet receive the royal assent, but others, it is highly probable, will be withdrawn.

The measures postponed or negatived, relating to the administration of justice, are—

1. The several bills for abolishing the jurisdiction of the ecclesiastical courts, relating to wills and administrations, and the establishment of a Probate Court. These several projects were introduced by Sir Richard Bethell, Sir Fitzroy Kelly, and Mr. Collier, and notwithstanding the coalition between these learned gentlemen, nothing has been done. Amongst the three stools, reform has come to the ground.

2. Abolishing some of the ecclesiastical local courts, namely, archidiaconal, peculiar and manorial, and transferring their jurisdiction to the diocesan courts. This would have been an improvement (though an insufficient one), by diminishing the large number of these local courts.

3. Church discipline. This jurisdiction of the ecclesiastical courts, which the Lord Chancellor proposed to amend, was successfully opposed by the lords spiritual.

4. Procedure and evidence. This bill was introduced by Sir Fitzroy Kelly for the further improvement of the mode of proceeding in the common law courts, and the extension of the rules of evidence by admitting testimony not now receivable. Though the bill has been read a second time and committed, no progress whatever has been made in committee, and it is evidently now too late to carry it through even the Lower House.

5. Mr. Locke King's Bill for Consolidating all the Statutes relating to the Summary Jurisdiction of Justices of the Peace has been withdrawn. The draft of the bill was pre-

pared by a country solicitor, and shows great care and diligence. These consolidations of numerous statutes into one are worthy of all encouragement.

6. The Qualification of Justices of the Peace Bill properly belongs to the administration of Justice, and if it had been passed, as proposed, would have enabled the Lord Chancellor to appoint, as county magistrates, Solicitors who abstained from practising criminal or sessions business.

We come next to the bills which were introduced for the purpose of altering or improving the *Rules of Law*, apart from the mode of procedure in the courts. These are:—

7. The Amendment of the Law of Partnership, which has been proposed by two several bills, the first of which was withdrawn, and the second was fatally damaged by a clause carried against the Government by a small majority, to the effect of requiring all loans (the interest of which was dependent on the profits of the business), to be notified in the *London Gazette*, with the amount of such loans, and the names of the leaders! Unless this decision of the House could have been reversed, the bill was useless, and, of course, was necessarily withdrawn.

8. Another alteration in the law which has been postponed was the bill for abolishing the distinction between simple contract debts and specialty debts in reference to the distribution of assets, but saving, of course, existing rights.

The next class of postponed bills are—

9. Tithes commutation, rent-charges.

10. The abolition of church rates.

11. The amendment of the poor laws.

12. The public health.

13. The burial laws.

All these bills it has been deemed expedient to withdraw, at least for the present session.

14. The proposition to alter the marriage law by repealing the prohibition of marriages with the sisters or nieces of deceased wives, was negatived by the House of Lords.

15. The bill proposed by Lord Lyndhurst for abolishing the oath of abjuration, by which the Jews are disabled from taking their seats in Parliament was negatived; and the other measure proposed by the Earl of Derby, which would have removed an objection to the form of oath, but left the question of Jewish disa-

bility untouched, was withdrawn as most unlikely to pass the House of Commons.

16. The City of London Bill, which, though not affecting the country in general, is in no small degree interesting to the metropolis, has also been withdrawn. The citizens have thus successfully opposed the plan of the commissioners, as embodied in the government bill, and there is some expectation that the municipal authorities will, before next session, propose a scheme of their own to remove some of the admitted defects in the constitution of that ancient and powerful corporate body.

17. The Appellate Jurisdiction Bill, though not actually withdrawn, has been referred to a *select committee*, and virtually, therefore, at this late season of the session, must be considered as negatived for the present.

18. The comprehensive scheme for appointing a public prosecutor, district prosecutors, agents, and official attorneys, remains in select committee; and it cannot be expected that any legislative measure can find its way into either house till the next session.

Next may be mentioned various measures relating to different branches of the law, of which notice was given in the present session; but as yet the intended bills have not made their printed appearance. They are as follow:—

19. The Consolidation of the Law relating to Bills of Exchange, proposed by Sir F. Kelly.

20. The Consolidation of the Statutes relating to Offences against the Person, also proposed by Sir F. Kelly.

21. The Amendment of the Law of Trust Property, criminally misappropriated, to be brought in by the Attorney-General.

22. A Bill for the severer Punishment of aggravated Assaults, proposed by Mr. Dillwyn, the member for Swansea, and one of the county magistrates.

23. The appointment of a Minister of Justice was recommended by Mr. Napier.

24. An intended new arrangement of the Circuits of the Judges was notified by Mr. Collier.

25. The Salaries of the County Court Judges was intended to be taken into consideration at the instance of Mr. Roebuck.

26. Mr. Murrough renewed his notice for Amending the Property Qualification of Members of the House of Commons.

27. Last, though not least, the subject of Education was brought under the consideration of Parliament, but nothing practical effected.

#### REMAINING BILLS.

It may be convenient to add here a List of the Bills still before one or other of the Houses of Parliament, in the order (as it appears to us) of their importance to the Profession:—

1. County Courts.
2. Settled Estates.
3. Mercantile Law.

4. Copyholds.

5. Judgments Execution.

6. County and Borough Police.

7. Married Women's Reversions in Personal property.

8. Intestates' Personal Estates.

9. Drainage of Lands.

10. Charitable Uses.

11. Charitable Trusts.

12. Evidence in Foreign Suits.

13. Stamp Duties on Articles of Clerkship and Proxies.

14. Divorce and Matrimonial Causes.

15. Formation of Parishes.

16. Prevention of Corrupt Practices at Elections.

17. Criminal Justice Amendment.

For the several stages at which these Bills have arrived, see *Postscript*.

#### THE APPELLATE JURISDICTION OF THE HOUSE OF LORDS.

THE discussion recently raised respecting the appellate jurisdiction of the House of Lords has enabled all the enemies of the profession to indulge in the expression of their hostility. It would be well for the country if this important question of the highest appellate jurisdiction was well understood and conscientiously considered in Parliament. This has not yet been its fate. Even the Attorney-General himself, receiving biased information from some particular quarter, shewed a want of that accuracy of knowledge which is absolutely required for the discussion of such a question. He, no doubt, fancied, in pure honesty of belief, that a particular case to which he referred had been improperly decided in the House of Lords, and in that belief he referred to it as affording one illustration of the inefficiency of the tribunal. He has been completely misled. Never was there a more righteous decision—never could there have been a greater premium offered to fraud than would have been offered to it had the decision been the other way.

Let us hear what the Attorney-General had been induced to believe, and then let us see what are the real facts of the case. The Attorney-General said:—"In a case mentioned in the evidence there had been conflicting decisions given by the Court of Exchequer and the Master of the Rolls. There was an appeal from the judgment of the latter, and it was heard before two law lords: they differed; and the result was that the judgment of the Master of the Rolls was confirmed, notwithstanding the conflicting decision of the Court of Exchequer." It is plain, from this mode of describing the case, that the Attorney-General thought that the judges of the Exchequer must have been right, and the Master of the Rolls wrong. Had he been truly informed of the facts, there can be little doubt he would have been of an

opposite opinion, and would have been so, even if the parties in the two courts had been the same, and their rights the same, and their title to the enforcement of their rights the same, no one of which circumstances was the fact. The case is that of *Bosanquet v. Shortridge*, in the Court of Exchequer (reported 4 Exch. Rep. 699), and *Shortridge v. Bargate*, in the Rolls Court (reported 16 Beav. 84), and *Bargate v. Shortridge*, in the House of Lords (reported 5 House of Lords cases, 297). The facts were these:—

Shortridge was a shareholder in "The Newcastle, Shields, and Sunderland Union Joint Stock Banking Company," which was established under the provisions of the 7 Geo. 4. c. 46, and regulated by a deed of settlement. We need not refer to the provisions of the statute—any one can do that; and those of the deed have a more direct bearing on the case. Let us give a summary of them. The accuracy of our summary may easily be tested by a reference to the reports we have quoted. The affairs of the company were entrusted to the management of eight directors, who were to meet at least once in every three months, each meeting to be styled "a board of directors" (this little matter of style becomes of far more importance than might be anticipated). To every person approved by the board of directors as fit to be a holder of shares a certificate was to be given, signed by three directors. A share register book was to be kept, in which "the board of directors" alone had power to make entries. No person was to become, or be registered as, a shareholder, without the consent of the board of directors, testified by a certificate in writing, signed by three directors in the form mentioned in the deed, after which consent the new shareholder might require his name to be entered in the register book. No shareholder could inspect this book without express permission of "the board." If the directors refused consent to a transfer, they were obliged to purchase the shares, and funds were provided for that purpose. From the very beginning of their doing business the "consents" were signed by three directors in an irregular manner. It had been a custom for one director to receive and examine proposals, and to sign the consent, to which the signatures of the other two directors were afterwards added, the latter being often written by each director in his own house. Mr. Shortridge was a shareholder, and in July 1847, he desired to sell his shares; he found ready purchasers, for the bank was at the time in high credit. He sent to the secretary the necessary forms, and received the consents signed, apparently, in the proper manner. The transfers were made, his name ceased to be on the register book—his vendees' names were there; the directors made the statutory returns, declaring who had ceased to be shareholders, and who had become so in their stead; and the name of Shortridge appeared in the former of these returns, and the names of his transferees in the latter. At the end of 1847 the bank fell into difficulties, and then disputed the validity of two of the transfers Shortridge had made, which appeared to have been made to persons who, like the bank itself, had ceased to be in flourishing circumstances. All his transfers, those to these persons and those to the rest of his vendees, appeared to have been made in exactly the same manner and with exactly the same forms, so far at least as he was concerned. The London and Westminster Bank being largely in advance to the Newcastle, &c., Union, took proceedings, recovered

judgment, and issued execution against several shareholders, but in the first instance not against Shortridge, whose name was not in the statutory returns at Somerset House. In January, 1848, the directors of the Newcastle, &c., Bank made an entry in their register book, declaring the transfers to Mr. — and Mr. — to have been irregularly made, and to be therefore void, and in March, 1848, sent in a fresh statutory return, in which Shortridge's name was placed among those of the existing shareholders. Bosanquet, the public officer of the London and Westminster Bank, then took proceedings by *scire facias* against Shortridge, and in that way the case came before the Court of Exchequer, where it was held that Shortridge, not having literally complied with the terms of the deed of settlement in the matter of the transfer of shares, had not in law ceased to be a shareholder. The fact was that the consent had been given not by a "board of directors,"—that is, at a meeting of three directors,—but the consent was signed first by the managing director at the office of the company, and then by two other directors at their private residences. There was no proof that Shortridge could have prevented or remedied this irregularity, or even that he knew of its having occurred, yet on this want of formality, which had been practised since the commencement of the company, the Court of Exchequer held him liable. The excuse for such a decision, for it really does require an excuse, is that the party proceeding against him was a creditor, to defeat whose claims the most extreme strictness might be required.

After this decision Shortridge filed his bill in Chancery, set forth all the facts of the case, and prayed relief in the form of being indemnified by this Court against the demands of the London and Westminster Bank. The Master of the Rolls gave him that relief, and that was the decision brought by appeal before the House of Lords. We are prepared to say, and we think that any man of business would be equally prepared to say, that if a choice was to be made between the two decisions, that of the Master of the Rolls was the more in consonance with the needful regularity of business, and with the principles of justice. But there was no conflict between the two decisions. The liability to the creditor, indeed, was assumed in the prayer of the bill, which asked that the court should indemnify Shortridge against it. And who is there, that is adverse to the gross neglect of duties undertaken by directors of public companies, that would not at once agree that it would be the height of injustice to make Shortridge suffer for the systematic irregularities of the directors—irregularities which he could neither prevent nor remedy, nay, which it was impossible for him to know.

The Lords supported the righteous and sensible decision of the Master of the Rolls. There was not a real difference of opinion between the Lord Chancellor and Lord St. Leonards on the case, as the report in Vol. 5 of House of Lords Cases plainly shows. The Lord Chancellor was still somewhat under the influence of the impression which had produced his judgment in *Bosanquet v. Shortridge*, when he sat as a Baron of the Exchequer, but he expressly says that he is "ready to acquiesce in the conclusion" at which Lord St. Leonards has arrived. The judgment of the latter noble and learned lord was a masterly exposition of the doctrines of equity applicable to the case, and contained a clear and searching examination of all the authorities which were deemed to have a bearing upon it.

10. Matters arising between delivery of Abstract and preparation of Conveyance.

11. Searches for and Inquiries respecting Incumbrances.

12. The preparation of the Conveyance.

13. Matters relating to the completion of the Purchase.

14. Effect of the Conveyance on the relative rights of Vendor and Purchaser.

15. Effect of the Conveyance on the adverse rights of third Parties.

16. The rights under the Conveyance of joint Purchasers and Persons other than the nominal Purchasers.

17. Remedies at Law for breach of Contract.

18. Specific performance of Contracts.

19. Sales by the Court of Chancery.

The doctrines of law, which are clearly and concisely stated by Mr. Dart, are, of course, essential to be known by both branches of the profession; but a large part of the practical rules are more particularly important to solicitors and articulated clerks. In this view we avail ourselves of some of Mr. Dart's valuable observations on the preparation of abstracts of title, and the costs of suits for the specific performance of contracts.

With regard to the former subject, the preparation, contents, and delivery of the abstract, the author states that—

"The abstract must always commence with a document, of at least the requisite age, if the vendor have one: but neither can a purchaser require, nor would the vendor's solicitor be justified in furnishing, an abstract of deeds prior in date to that which would constitute a good root of title: the purchaser, however, may require the *production* of every document in the vendor's possession, however ancient.

"As a general rule, the first abstracted documents should purport to deal with the entire legal and equitable estates in the property, or should at least afford *prima facie* evidence that the title to such legal and equitable estates was, at the date of such documents, consistent with the title as subsequently deduced: they should not be dependent for their validity upon any previous instrument: and should contain nothing raising a fair doubt whether the parties claiming the interests there purported to be dealt with, were in fact entitled so to deal with them."

After several illustrations of this general rule, Mr. Dart proceeds thus—

"It is not *essential* that the origin of the title should be shown either by deed or will; in the absence of documents it may be sufficient to produce evidence of such long uninterrupted possession enjoyment, and dealing with the property, as to afford a reasonable presumption that there is an absolute title in fee-simple. But the proof of title by evidence of possession is not admissible in cases where documents forming part of the modern title are lost or destroyed; in such cases the vendor must prove their contents and execution.

"The title, wherever taken up, should be thence continued either in chronological or some other regular order; where separate parts of the estate are held under separate titles, such titles should, of

course, be traced separately so long as they remain distinct, every subsequent document dealing with the legal estate (except expired leases, and with the exceptions already referred to), should be abstracted, for instance, a mortgage and a re-conveyance are not to be suppressed under the notion that the title has been thereby brought back to its original state; such may, or may not, have been the case; and is a point to be determined by the advisers of the purchaser, not of the vendor: all documents forming part of the title should be abstracted in chief; the introduction of them merely as recitals in other abstracted instruments (which is not uncommon, especially in the case of wills), is, it is apprehended, clearly improper: were it not so a copy of the conveyance to the vendor might, in many cases, take the place of an abstract: besides which, the omission to abstract a document in chief may proceed from a desire to avoid noticing matters of a suspicious character occurring in such document, but which are not noticed in the recital: it is convenient to introduce, in their proper places, direct statements of deaths, marriages, and other matters of pedigree: and not, as is frequently done, to trust to the recitals in the abstracted documents; and in cases of complicated descents, &c., a regular pedigree should accompany the abstract."

"Documents affecting merely equitable interests give rise to considerations of greater difficulty: Lord St. Leonards states generally, that the solicitor 'should abstract every document upon which the title depends, or upon which any difficulty has arisen; wherever he begins the root of the title, he ought to abstract every subsequent deed': this, however, it is conceived, must be understood to mean every document upon which the purchaser's title will necessarily depend: if, for instance, the vendor be possessed of a document declaring that a prior owner who purchased, apparently on his own account, was in fact a trustee, or, that a mortgage-debt was trust-money, the title of the vendor who has notice of the trust may depend upon various instruments which would be altogether immaterial to a purchaser destitute of such notice; and it would, it is conceived, be unusual and highly improper, for the solicitor to allow notice of such a trust to appear upon his abstract: this, however, it must be admitted, is, *pro tanto*, a departure from the general principle, that it is for the purchaser's solicitor, and not the vendor's, to judge of the materiality of the muniments of title: but it is sanctioned by convenience and universal practice. Other cases may perhaps occur in which a document may be, without material risk, suppressed; as, for instance, where a good title is shown to the legal estate, and a charge, which clearly operated merely in equity, has been paid off and no trace of it appears upon the subsequent title: the difference between the suppression of such an instrument and a legal mortgage is evident; the equitable charge has no operation as against a subsequent purchaser for valuable consideration without notice, and his title, therefore, is not dependent on the sufficiency of the release: nor does there seem to be any good reason for making a distinction between an equitable charge by deed, and a mere memorandum accompanying an old equitable mortgage by deposit, which, except upon special grounds, is never abstracted; but, in the case of a legal mortgage, the purchaser's title at

\* It would be better if these various points were marked by numbers, where they are separate and distinct from each other.

law will depend (theoretically if not practically) upon the legal validity of the deed of reconveyance, whether its existence be known to him or not: still, even in the case of the equitable charge, it seems at least probable that a solicitor who suppresses it, under the idea that it is unimportant to the title, does so at his own risk; and it is submitted, that such a course should rarely, or never, be taken, in respect of an instrument which is so framed that it could by possibility affect the legal estate; as, for instance, a mortgage of an equity of redemption, drawn as a conveyance with a proviso for redemption; and which, although merely a charge in equity if the first mortgage be valid in law, would yet pass the legal estate, supposing it not to have been effectually transferred by the prior instrument."

As to consulting counsel, and the delivery of the abstract, the following regulations are pointed out:—

"Cases not unfrequently occur of complicated titles, in which the solicitor who prepares the abstract will be justified in laying it before counsel on behalf of his own client; this remark applies particularly to heavy mortgage transactions, in which considerable expense to the mortgagor may frequently be saved by the delivery in the first instance, of a perfect and well-verified abstract.

"An abstract may be written so illegibly, or upon paper of such an inconvenient size or substance, as to justify the purchaser's solicitor or counsel in declining to receive it.

"The non-delivery of a perfect abstract on the day named, discharges the purchaser from any conditions binding him to make objections, &c., within a specified time after delivery; and, at law, relieves him altogether from the contract: in equity, however, the purchaser will be bound if either he neglect to apply for the abstract within a reasonable time before the day fixed for its delivery, or if, upon its being subsequently tendered, he receive it without objection: but the wilful neglect on the part of a vendor to prepare the abstract within proper time, when pressed by the purchaser to do so, will, even in equity, entitle the purchaser to avoid the contract as soon as the time fixed for completion is elapsed: where the purchaser's solicitor intends to rely upon the non-delivery of the abstract upon the day named, or (if no day have been named) within a reasonable time before the day fixed for completion, he should decline to receive it; or, if forwarded to him under circumstances which gave no opportunity for its rejection, he should at once return it, and without reading it.

"Where it is important to the purchaser to complete (if at all), at or about the time fixed for completion, and the abstract, having been called for, is delivered so late as to render it doubtful whether this can be accomplished, the most expedient course would appear to be, to return it unread; offering, however, to receive it again, without prejudice to the purchaser's right to annul the contract, if, on investigating the title, it should be found impossible to complete at (or within some short specified period after) the time originally fixed for completion."

We conclude our extracts with the author's comprehensive and well-arranged statement of the effect of the decisions on various classes of cases relating to the costs of suits for the specific performance of contracts, and which we consider to be peculiarly useful to solicitors:

"In equity, as at law, the party who fails is,

*prima facie*, liable to costs: and, although the question of costs rests entirely in the discretion of the court, yet it is for the unsuccessful litigant to show (if he can), the existence of circumstances sufficient to negative his *prima facie* liability; and the present disposition of the courts appears to be, to adhere, with considerable strictness, to the general rule. It has been curtly observed by Lord *Cottenham, C.*, 'parties may have more or less reason for coming here; but the question is, whether those who are right, or those who are wrong, are to pay the costs of their so doing. The rule I always act upon is, to order costs to be paid by those who are wrong.'

"The cases upon the subject may be conveniently classified as follows, viz:—

"1st, Cases where the general rule, fixing the unsuccessful litigant with costs, is enforced with more than ordinary stringency.

"2ndly, Cases where it is merely allowed to operate.

"3rdly, Cases where it is modified, so as to deprive the successful litigant of his costs, wholly or in part.

"And 4thly, Cases where the successful litigant is wholly or in part fixed with payment of costs."

"As to the 1st class of cases.—A vendor obtaining a decree for specific performance has been held entitled to costs on the special ground of the purchaser having persisted in an objection to the title which he knew had been decided against another purchaser in a former suit: so, where a bill is dismissed on the ground of misrepresentation or fraud, or contains groundless imputations of moral fraud against the defendant, or where the claim is dishonourable and contrary to moral equity, or against a clear stipulation in the contract, the dismissal will be with costs: so, where the unsuccessful litigant has acted fraudulently in the subject-matter of the suit, or has acted vexatiously, and refused fair offers of accommodation, the decree against him will generally be with costs.

"As to the 2nd class of cases.—A purchaser resisting specific performance, on grounds which the court considers clearly untenable, will not be relieved from costs because he acted under counsel's opinion; or even upon the recommendation of the master: so where he is held by his conduct to have waived the usual reference upon the title, or any particular objection arising on the title, and he has rested his defence on the question of title, the decree against him will be with costs: so, where the vendor's bill is dismissed merely for want of title, and the title is clearly bad, the decree against him is with costs, although he be merely a trustee for sale, or although the title have become defective through the accidental destruction of the deeds subsequently to the contract: so, where a purchaser had objected that a good title could not be shown unless certain accounts were taken, and, this being resisted, each party filed a bill for specific performance, the court, holding the purchaser to be right, made a decree in the second suit, and gave him the costs of both suits.

"As to the 3rd class of cases.—A vendor obtaining a decree, has been refused costs on the ground of his having unsuccessfully contended that the purchaser had waived his right to investigate the title: so, a vendor has been refused costs where the purchaser's objection to the title, although

\* This classification is valuable, and enables the practitioner to steer his course with probable success for his client.

overruled, has been considered a fair objection, or has been overruled merely on the authority of an unreported decision, or has been occasioned by the vendor or his solicitor; or has arisen from a mutual misunderstanding: so, where the title was not clear on the abstract as delivered before bill filed; or the vendor has refused to furnish necessary evidence in support of the title, (although the purchaser's requisitions embraced unnecessary evidence); or where he has obtained a decree on the ground of the purchaser's acquiescence in a voidable contract.

"So, the dismissal of the vendor's bill has been without costs, in cases where the dismissal was merely on the ground of his own *laches* in applying to the court, or of the title being merely doubtful, or on the ground of agency being denied, or of the general inaccuracy of the transactions relied on as constituting the contract, or upon a ground of defence which the purchaser did not resort to until after the institution of the suit: so, where a purchaser had, in the first instance, by his acts, waived the time for completion, and had gone on for some time inducing the vendor to incur expenses to perfect his title, and suddenly, upon discovering that vacant possession could not be given according to stipulation, declined to complete: so, according to Lord *St. Leonards*, 'if, after a bill filed for specific performance, the plaintiff, in pursuance of a power in the instrument, determines the contract, the bill will be dismissed without costs': so, the court has, by way of compromise, refused to fix the vendor with costs, he on his part consenting to give up his legal right of action under the agreement.

"So, a purchaser obtaining a decree for specific performance, has been refused his costs, on the ground of the inadequacy of the consideration: so, where a purchaser's bill for the performance of a contract alleged to arise out of correspondence, was dismissed on the ground of the language being equivocal and not clearly amounting to an agreement, costs were refused: so, where it was dismissed on the ground of delay, and the vendor had not objected to the delay: so, also on the ground of the defendant having in his answer alleged fraud and circumvention, which he failed to prove, or having set up a false defence which the plaintiff has been obliged to disprove: so, where the suit is occasioned by the death of the vendor before completion: so, if the purchaser elect to have his bill dismissed, upon its appearing that the vendor cannot make a title, the present practice seems to be to dismiss the bill without costs; unless, perhaps, his bill alleges that the vendor cannot make a title: so costs have been refused on the ground of delay in the commencement and prosecution of the suit.

"And it has been held that, if a bill is correctly filed on the authority of a reported decision, there being no authorities in conflict with it, and such decision is reversed, the plaintiff may thereupon, on motion, dismiss his bill without costs: so, where the defendant puts an end to the subject-matter of the suit;—as by surrendering a lease on a bill being filed for its assignment, and absconding.

"As to the 4th class of cases.—It not unfrequently happens that the party obtaining a decree has been clearly in the wrong, during all or a part only of the litigation; and if so, he must, as a general rule, pay all or a proportionate part of the costs of the suit: *e. g.*, in an exceptional case, where the plaintiff obtained a decree not in accordance with the prayer of his bill, he was made to pay the costs

of the suit: so, 'if a purchaser file a bill insisting that the vendor cannot make a title, he must pay the costs, whether he accept or refuse the title': so, if a purchaser, being a plaintiff and aware of objections to the title, require a reference to chambers, and, on the certificate being against the title, agree to waive the objections, he must pay the costs of the unnecessary investigation: so if, prior to the filing of the vendor's bill, the contract was resisted merely on the ground of want of title, and no title was shown before bill filed, the plaintiff, although he obtain a decree, will have to pay the costs up to the time when he showed a title; and this, although the purchaser, by his answer, unsuccessfully insist on the alleged illegality or abandonment of the contract; or even the general costs of the suit, except such costs as have been occasioned by improper contentions or objections made or taken by the defendant in the course of the suit: so, where a vendor, when before the master, abandoned the ground on which he had previously relied, but established his title on another ground, and the master reported generally in favour of the title, the purchaser was allowed the costs of the reference and the several applications to the court. But the rule will not prevail where the purchaser, by resisting the contract on grounds other than of title, or by his improper contract, or claim, has occasioned the litigation; or where, insisting on other objections, he has not excepted the vendor's offer to procure evidence which, if produced, would have perfected the title: so, if a purchaser file a bill for specific performance with an abatement of purchase-money, the question of abatement being the only one in dispute, if he fail upon this point the decree for specific performance will give costs against him: so, if the successful litigant introduce upon the pleadings unfounded allegations affecting the character of his opponent, he will have to pay the costs thereby occasioned. But where the court, merely on the ground of the personal hardship of the case as against the defendant, refuses to enforce specific performance, and dismisses the bill, it will not make him pay the plaintiff's costs.

"Where a purchaser sets up a defence which prevents the plaintiff from obtaining the usual reference of title on motion, and fails to establish it, he may be at once directed to pay costs up to and inclusive of the hearing, without regard to the result of the reference.

"Where the defendant submits to the whole demand of the plaintiff, and to pay costs, he may at once stop all further proceedings; and, if the question of liability to costs be the only one remaining in dispute, the proper course, it appears, is, to apply to the court by petition: and where a plaintiff omitted so to do, but brought the cause to a hearing, the court refused him any costs subsequent to the time at which his original demand had been submitted to. It has, however, been unwillingly held by *V.-C. K. Bruce*, that this course cannot, without the defendant's consent, be adopted before answer; inasmuch as he has a right to put in his answer, and read it on the question of costs at the hearing: and in a later case his Honour refused a similar application by a plaintiff after answer; but merely on the ground of the novelty of the proceeding: and where the defendant by an agreement for compromising the suit had admitted his liability to costs, and failed to fulfil the agreement, but subsequently satisfied the plaintiff's demand except in respect of

costs, Lord Langdale, upon motion before answer, ordered their payment.

"It has been laid down by Sir J. Wigram, V. C., as a general rule, that where a defendant so disclaims as to show that he had no interest in the property *when the bill was filed*, he is entitled to his costs: but where he is properly brought before the court in respect of an interest at the time the bill was filed, and then says, 'I now abandon my interest,' it is a question of discretion with the court either to order the plaintiff to pay the defendant's costs or not; with reference to the circumstances which may have rendered the suit necessary or proper.

"Where a vendor, having a bad title, files a bill for specific performance, and his title is perfected pending the suit, it is his duty to offer to the purchaser his costs up to that time, and to give him a conveyance.

"In general, a purchaser is less favoured on the question of costs when he has taken possession of the estate before the title is made out; but this does not apply to cases where, according to the contract, possession is to be taken before a title is shown; or where it is taken at the instance of the vendor. A purchaser who, for many years, retained possession without payment, and refused either to vacate the contract or accept the title, was fixed with the costs of a suit by the vendor, although the title was ascertained to be defective.

"Where the court has actually dismissed a purchaser's bill with costs, it will not, on a subsequent application, allow him to set off against them the deposit paid to the vendor, but will leave him to his legal right: but the court, as we have seen, has refused to give costs unless the vendor would return the deposit.

"Where a defendant, a purchaser, asked for a case to be sent to a court of law, which was granted, and the opinion of the judges was against him, but ultimately the bill was dismissed with costs upon another ground, he was allowed his costs at law as well as in equity: but, in other cases, the costs of, what may be termed, collateral litigation, have either been refused, or have been thrown upon the party failing therein, although held entitled to the general costs of the suit. It would appear that, as a general rule, such costs are not included in a mere order for payment of the costs of the suit.

"And it is laid down by Lord St. Leonards, as a general rule, 'that either party resorting to law, where the equity is against him, will be fixed with the costs of the action'; but the *prima facie* right of the other party to such costs may be lost by his neglecting to resort to equity so soon as the action is commenced at law.

"Where either party has received costs under an order or decree which is subsequently reversed on appeal, he will not, in repaying such costs, be compelled to pay interest upon them.

"A mortgagee has been refused, as against the mortgaged estate, his costs of an unsuccessful suit against a purchaser for specific performance, although instituted under the best advice.

"In one case an order is stated to have been made on the petition of the vendor's solicitor, restraining the vendor from receiving, and the purchaser from paying, the purchase-money until the solicitor's lien for costs was satisfied."

Very numerous authorities have been cited by Mr. Dart in support of these *dicta*, for which we refer to his pages.

## COPYHOLD ACTS AMENDMENT BILL.

THIS bill recites that it is expedient to repeal certain provisions of "The Copyhold Acts," and to make further and other provisions for the commutation of manorial rights in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such tenure.

The proposed enactments are as follow:—

1. This act shall come into operation on the 1st Jan., 1857.

2. The following acts and sections and part of sections of "The Copyhold Acts" are hereby repealed, that is to say—

The whole of the 16 & 17 Vic. c. 57.

So much of the 11th section of "The Copyhold Act, 1841," as follows after the words "substituted in the place of such lord, tenant, or other person."

The whole of the 2nd section of "The Copyhold Act, 1852."

The whole of the 11th section of "The Copyhold Act, 1852."

All the provisions of the copyhold acts which authorise commutations by schedule of apportionment, and also all the provisions which authorise commutations by a schedule to be prepared by the steward, and also all the provisions which authorise enfranchisement by schedule of apportionment, and also all the provisions which authorise the charging of enfranchisement or compensation monies or the expenses of commutations or enfranchisements upon land, are hereby repealed.

3. Saving of acts done, rights vested, &c.

4. The copyhold acts shall not extend to any manors belonging, either in possession or reversion, to any ecclesiastical corporation, or to the Ecclesiastical Commissioners for England, where the tenant has not a right of renewal.

5. *Application of consideration money.*—Whenever it shall appear to the Copyhold Commissioners that an enfranchisement under the copyhold acts is one which might have been effected under the provisions of the 14 & 15 Vic. c. 104, so long as that act or any act for continuing the same shall be in force, the moneys or rent-charges which form the consideration of such enfranchisement shall be paid and applied to the same account and in the same manner as if such enfranchisement had been effected under the said act of the fourteenth and fifteenth of her Majesty; and all the provisions of the said last-mentioned act which affect the application of enfranchisement moneys under that act shall be applicable to such enfranchisements as aforesaid, made under the provisions of the copyhold acts; and the Church Estates Commissioners and Ecclesiastical Commissioners shall respectively have the same powers over such consideration moneys, or the interest accruing thereon, or upon land, rent-charges, or securities acquired in respect of such enfranchisements, and also over or against any ecclesiastical corporation interested therein, as such commissioners respectively would have had if such enfranchisement had been effected with the consent of the Church Estates Commissioners, and under the provisions of the said act of the fourteenth and fifteenth of her Majesty or any act continuing the same. But where any ecclesiastical corporation within the meaning of the said last-mentioned act, or the said Ecclesiastical Commissioners have only a reversionary interest in the ma-



manorial rights extinguished by enfranchisement, the consideration for such enfranchisement shall be dealt with in the manner directed by the 89th section of "The Copyhold Act, 1852," until the time when the said reversionary interest in the same manorial rights would, if the same had not been extinguished, have come into possession, when the said consideration, or any Government securities in which it may have been invested, shall, upon petition to the Court of Chancery, be paid or transferred to the said Church Estates Commissioners, who shall be considered the parties become absolutely entitled to such money, to be dealt with as if they had come into possession thereof in consequence of an enfranchisement effected under the said act of the fourteenth and fifteenth of her Majesty.

**6. Mode of effecting compulsory enfranchisements.**

—When any lord or tenant shall, under the provisions of "The Copyhold Act, 1852," or of this act, require the enfranchisement of any land held of a manor, he shall give notice in writing (the lord or his steward to the tenant, or the tenant to the lord or his steward), of his desire that such land shall be enfranchised; and the consideration to be paid to the lord for such enfranchisement shall, unless the parties agree about the same, be ascertained under the directions of the Copyhold Commissioners, and upon a valuation to be made in the manner following; that is to say—

Where the manorial rights to be compensated shall consist only of heriots, rents, fines certain, and licenses at fixed rates to demise or fell timber, or any of these, or where the land to be enfranchised shall not be rated to the poor's rate at a greater amount than £20, then the valuation shall be made by a valuer to be nominated by the commissioners, subject, however, to this proviso, that if the parties agree to recommend to the commissioners any person to be the valuer, such person shall be nominated by the commissioners.

But when the manorial rights to be compensated do not consist only of rents and heriots and fines certain, or the land to be enfranchised is rated to the poor's rate at a greater amount than £20, then the valuation shall, unless the parties agree to refer it to one valuer, be made by two valuers, one to be appointed by the lord, and the other by the tenant; and such two valuers, before they proceed, shall appoint an umpire, to whom any points in dispute between them shall be referred; and in case the valuer or valuers or umpire, as the case may be, shall not make a decision, and deliver the particulars thereof in writing to the lord or the steward and to the tenant, and to the Copyhold Commissioners, within forty-two days after the appointment of such valuers, or reference of the matter to the umpire, as the case may be, then the commissioners shall fix the consideration to be paid or rendered to the lord; and in any case where, after notice to the lord or to the steward or the tenant so to do, either party shall neglect or refuse, for twenty-eight days, to appoint his valuer, the commissioners shall appoint a valuer for him as soon as may be after the expiration of such twenty-eight days; and in any case where any valuers shall, for the space of fourteen days after the appointment, be unable to agree in the appointment of an umpire, the commissioners shall appoint an umpire.

7. The commissioners may, by an order under seal, extend the time within which this act directs that any valuer be appointed, or any act to be done by such valuer be performed.

8. Valuations may be remitted by the commissioners to the valuer or umpire by whom they were respectively made, and such valuer or umpire shall thereupon reconsider the same, and may, if he shall see fit, amend the valuation.

9. After the valuation has been made, or upon the receipt of the agreement of the parties, the commissioners, having made such inquiries concerning the circumstances of the case as to them shall seem fit, and having duly considered the applications made to them by the parties, may frame an award of enfranchisement in the terms of the valuation, and in such form as they shall provide, and may confirm the same; and such confirmed award shall have the same force and validity for all purposes of enfranchisement or otherwise as a deed of enfranchisement now has under the provisions of the copyhold acts, or would have had under any provision of the copyhold acts which is by this act repealed; and for all purposes of declaring the amount, nature, and particulars of the compensation, and for attaching thereto the remedies provided by the copyhold acts, the said confirmed award shall have the same force and validity as an award made by valuers or umpires under the provisions of the copyhold acts.

10. *Calculation of rent-charges.*—Whenever a rent-charge hereafter granted under the provisions of the copyhold acts shall be a rent-charge varying with the price of corn, such rent-charge shall not be calculated in the manner now directed by the copyhold acts, but shall be calculated upon the same average and variable in the same manner as a tithe commutation rent-charge; but this amendment shall apply only to corn rent-charges hereafter to be imposed, and not to any already existing under the authority of the copyhold acts, but these last-named corn rent-charges shall retain their former character and incidents.

11.—The commissioners shall not confirm any award of enfranchisement where the consideration is a gross sum of money immediately payable, or land, until the receipt of the person entitled to receive the consideration or compensation money has been produced to them, or the conveyance of the land has been confirmed by them.

12. If the lord refuse to receive the enfranchisement money it shall be dealt with as is provided in cases where the lord is only entitled for a limited estate.

13. *Decision of questions.*—When any question shall arise as to the necessity of or right to any admission, or the fines or fees payable in respect thereof, or as to whether land is capable of being dealt with under this act, the same shall be heard and decided by the commissioners, upon such requisition and subject to such appeal as is required and given by the copyhold acts in cases now within the provisions of the eighth section of "the Copyhold Act, 1852."

14. *Use of soil.*—After enfranchisement, whether under the voluntary or compulsory proceedings of "the copyhold acts," the owner of the lands so enfranchised shall, notwithstanding any reservation of mines or minerals in the said acts or in any instrument of enfranchisement contained, have full power and right to disturb or remove the soil so far as may be necessary or convenient for the purposes of making roads or drains or erecting buildings or obtaining water, or for digging stone or brick or other earth to be used upon the land enfranchised, or for any other purposes necessary or convenient to

the full enjoyment, improvement, or cultivation of the land enfranchised.

15. *Payments to trustees of corporations.*—In the case of a corporation lord of the manor not authorized to make an absolute sale otherwise than under the provisions of the copyhold acts, and where the money to be paid for the use of such corporation does not exceed £200, enfranchisement moneys may be paid into the hands either of the official trustees of charitable funds acting under "the Charitable Trusts Amendment Act, 1855," or, at the option of the corporation, into the hands of trustees to be nominated by the commissioners, by order under seal, in the same manner as in other cases already provided for by the copyhold acts; and the money shall be applied by the trustees, with the consent of the commissioners, to the purposes to which enfranchisement money paid into the Bank of England in the name of the Accountant-General is directed by this act to be applied; and upon every vacancy in the office of such trustee, or in case any such trustee should be desirous of resigning or should become incapable of acting, some other person shall be appointed by the commissioners in like manner.

16. The commencement of every commutation or enfranchisement, and of any rent-charge, may be fixed by the memorandum of confirmation of the instrument of commutation or enfranchisement, or, in default of being so fixed, it shall take place on the day of confirmation; but the commissioners shall have power to fix the day whence the half-yearly payments of the rent-charge shall commence to be calculated, at any period not more than six months posterior to the day fixed for the commencement of the commutation or enfranchisement; and the portion of rent-charge which shall accrue between the day of the commencement of the commutation or enfranchisement and the day fixed by the commissioners as the day whence the half-yearly payments of the rent-charge shall commence to be calculated shall be paid and recoverable in like manner as any after-accruing half-yearly sum is payable or recoverable.

17. *Reversioners.*—When the copyhold acts require that notice in writing be given to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be effected by a commutation or enfranchisement, so that the assent or dissent or acquiescence of any person entitled in remainder or reversion may be stated in writing to the commissioners when the application for voluntary enfranchisement by award or the instrument of commutation or enfranchisement is sent to them, the commissioners may, if they shall see fit, by an order under seal, dispense with such notice in all cases where, after reasonable inquiry has been made, the person entitled to the next estate of inheritance in remainder or reversion cannot be discovered.

18. *Ecclesiastical commissioners.*—Where any land proposed to be enfranchised under this act shall be held of a manor belonging either in possession or reversion to an ecclesiastical corporation within the meaning of the act of the fourteenth and fifteenth years of her Majesty's reign, chapter one hundred and four, the ecclesiastical commissioners for England shall have notice of such proceedings, and shall have the same power of expressing assent to or dissent from such proceedings as is by this act directed with respect to persons entitled to the next estate of inheritance in reversion or remainder, and the provisions of the copyhold acts respecting such notices (other than and except the power of the said

copyhold commissioners to dispense with notice), and all proceedings thereon (except as otherwise by this act is provided), shall be applicable to such cases.

19. *Notices.*—Where notice or other writing is by this act required to be given to any designated person or party, it may be given either by sending it by the post in a registered letter to or by leaving it at the office or usual place of abode of such person, and all notices required to be given by the commissioners or any valuer (the mode of giving which is not particularly directed) may be in the name either of the person giving the notice or of any person authorized by the commissioners to give notices, and all notices so given shall be deemed sufficient notices to all persons concerning all matters and things to which such respective notices may relate.

20. *Charges on land.*—Whenever by the copyhold acts power is given or an obligation attaches to any person to pay money as consideration or compensation for commutation or enfranchisement, it shall be lawful for such person, with the consent of the commissioners, to charge upon the land commuted or enfranchised the sum of money paid.

21. Whenever land is conveyed as consideration or compensation for commutation or enfranchisement, and the person conveying the same was absolute owner of the land so conveyed, it shall be lawful for such person, with the consent of the commissioners, to charge upon the land commuted or enfranchised such reasonable sum as in the judgment of the commissioners may be equivalent in value to the land so conveyed.

22. Where power is by the copyhold acts given to the lord to purchase the tenant's interest in land, he shall have the same right to charge the land purchased, and also the manor and any land settled therewith to the same uses, as a tenant has under this act to charge enfranchisement moneys.

23. *Expenses.*—Any expenses incurred in proceedings under the copyhold acts may be charged upon the manor or upon the land commuted or enfranchised, or upon both, according as the obligations to pay may attach, or expenses payable by the lord may be paid out of the compensation or consideration money, or be charged upon the rent charge or other consideration or compensation for commutation or enfranchisement.

24. Any charge under this act in respect of consideration or of compensation money, or of purchase money, or of the value of land conveyed, may, when the parties so agree, and the commissioners approve, be made for a principal sum and interest, or for a series of periodical payments, which, at the termination thereof at the period specified, shall leave the manor or land discharged.

25. Whenever by the provisions of the copyhold acts any lord or tenant is authorized to raise money upon charge, or to purchase or convey any land, and to charge the principal or the purchase money or the value upon a manor or land, then the expenses incurred about the raising of such money upon charge, or incurred about the purchase, or purchase and conveyance, shall (but as distinct from the general expenses of commutation or enfranchisement) be considered for all purposes or effects of charging as part of the principal purchase money or value to be charged.

26. All other charges in respect of expenses of proceedings under the copyhold acts (except the expenses of a purchase by a lord) shall be for such period as the parties may agree and the commissioners

may approve, not exceeding fifteen years, and at such interest as stated in the certificate of charge.

27. If by reason of disputes as to title or other circumstances it shall appear to the commissioners to be uncertain upon what person the order to pay costs or expenses should be made, the commissioners may, if they shall so see fit, grant to the person entitled to receive payment of such costs or expenses a certificate of charge upon the manor or land in respect of which such costs or expenses were incurred, which shall operate in all respects as other certificates of charge under this act.

28. Every charge under this act shall be made by a certificate under seal of the commissioners, to be called a certificate of charge; and if such charge shall be a series of periodical payments which, at the termination thereof at the period specified, shall leave the manor or land discharged, such series shall be specified in the certificate; but if the charge shall be a principal sum bearing interest, and repayable at or before a certain future date, or after a certain notice, then such certificate shall specify the whole amount of principal money to be charged, and shall contain a proviso declaring that such certificate shall be void on payment of the amount thereby secured, with any arrears of interest due thereon, at a time therein appointed, or at the expiration of an ascertained notice; and such certificate shall state whether the charge was made in respect of costs or expenses, or in respect of consideration or compensation money, and may specify any place, to be agreed upon between the parties, as the place of payment of the principal money and interest charged by such certificate; and the manor or land charged thereby may be described by reference to the enfranchisement proceedings under the copyhold acts, or otherwise, as the commissioners may see fit.

29. Every certificate and the charge thereby made shall be transferable by endorsement on such certificate.

30. Whenever a lord of limited interest shall be entitled to a certificate of charge in respect of enfranchisement money left chargeable upon the land enfranchised, the charge shall remain appendant and appurtenant to the manor (but not so as to be incapable of being severed therefrom, or to be affected by the extinction thereof); and the certificate of charge shall state that the lord to whom such certificate is issued has only a limited interest in such charge, or it may purport to be issued to the lord for the time being of the manor; and either of such statements in such certificate shall be notice to all persons of the limited interest in such charge which may pass by transfer of such certificate.

31. *Stamps.*—Every award of enfranchisement, certificate of charge, and transfer thereof, issued or made under this act, shall be chargeable with the like stamp duties as are chargeable in respect of deeds of enfranchisement, mortgages, and transfers of mortgages.

32. *Priority of charge.*—Any charge under this act made in consideration of the value of land conveyed as consideration, or of consideration or compensation money, or of purchase money, or of the expenses of purchase and conveyances, shall be a first charge on such manor or land, and shall have priority over all mortgages, charges, and incumbrances whatsoever affecting such manor or land (except tithe commutation rentcharges, and any charges or rentcharges which may have been or shall be charged upon the same land for the drainage thereof, by virtue of any of the statutes in

that behalf), notwithstanding the actual priority in point of date or anterior title of such mortgages, charges, and incumbrances; but any moneys already invested or previously secured or charged thereon may be continued on the security of the same, notwithstanding the imposition of the said charge under this act.

33. *Merger.*—Any such certificate of charge may be taken by any person, although he may be the lord or tenant or owner of any manor or land charged thereby; and the same shall not merge in the freehold unless the owner of such charge shall, by indorsement upon the certificate of charge or otherwise, declare in writing that it is his will that such charge shall merge and cease.

34. The owner for the time being of a certificate of charge shall, in respect of any payment in the nature of interest or instalment that may become due under the certificate, have the same remedies and be subject to the same conditions in the recovery thereof as are by the copyhold acts provided in respect of rentcharges; and for a further and additional remedy in that behalf, and in respect of any payment in the nature of interest, or of a periodical payment, or of an instalment, or of a gross principal sum, that may be secured by the certificate, the manor or land shall from the date of the certificate stand charged with the respective sums mentioned in such certificate to be payable, and until such payment the owner for the time being of the certificate shall be deemed to stand seized of the manor or land as a mortgagee in fee thereof, and it shall be lawful for the person so seized from time to time to adopt such means and proceedings as a mortgagee in fee of freehold land is entitled to, for the enforcing payment of principal sums, or interest, with the like right to obtain payment of all attendant and incident costs and expenses.

35. *Form of certificate of charge.*

36. *Form of transfer of certificate.*

37. *Undivided shares.*—When land is held in undivided shares the person for the time being in receipt of at least two thirds of the value of the rents and profits of such land shall be the "tenant" of such land for all the purposes of "the copyhold acts."

(To be concluded in our next.)

## STAMP DUTIES BILL.

THIS is a bill to reduce the stamp duties on certain instruments of proxy; and to amend the laws relating to the stamping of articles of clerkship to attorneys and others; and the proposed enactments are as follow:—

In lieu of the stamp duties now payable on the several instruments of proxy hereinafter described there shall be charged and paid the duties following:

For and in respect of every letter or power of attorney, and every commission, factory, mandate, or other instrument in the nature thereof, made for the sole purpose of appointing or nominating a proxy to vote at any meeting within any part of the United Kingdom of the proprietors or shareholders of or in any joint-stock company or other company or society whose stock or funds are divided into shares, and transferable, or made for the purpose of appointing, nominating, or authorising any person to vote as a proxy, commissioner, mandatory, or otherwise, at any parish meeting of heritors or proprietors of

real or heritable property in Scotland, the stamp duty of *sixpence*.

2. Provisions of 7 Vic. c. 21, s. 6, and other stamp acts to be applied to the new duties.

3. By the 7 Geo. 4, c. 44, the Commissioners of Stamps, or any of their officers, are not to stamp, after the expiration of six months from the date thereof, any vellum, parchment, or paper, upon which shall be engrossed, printed, or written any articles of clerkship, contract, indenture, or other instrument, whereby any person shall become bound to serve as a clerk or apprentice, in order to his admission as a solicitor, attorney, proctor, writer to the signet, agent, or procurator in any of the courts of law or equity, or the High Court of Admiralty, or any ecclesiastical court, or the courts of session, judiciary, exchequer, commission of teinds, or the commissary court, or any inferior court in Great Britain: It is now proposed to enact, that it shall be lawful for the Commissioners of Inland Revenue, in any case where they shall be directed so to do by the *Lords Commissioners of her Majesty's Treasury*, to stamp any such instruments as last mentioned, upon payment of the duty chargeable thereon at the date thereof, and of such further sum as hereinafter specified by way of penalty, and in lieu of all other penalties—

As to any such instrument bearing date and executed before the 1st August, 1853, the sum of £20.

As to any other such instrument where the same shall be brought to be stamped within the period of one year from the date thereof, the sum of £10.

After one year, and within two years, £20.

After two years, and within three years, £30.

After three years, and within four years, £40.

And after four years, £50.

## BILL FOR ABOLISHING ARCHIDIACONAL AND PECULIAR COURTS.

THE proposed enactments of this bill are as follow :—

1. The jurisdiction of all archidiaconal, commissariat, peculiar, and manorial courts, of or concerning probates of wills and letters of administration of the estate and effects of deceased persons, shall, on and after the 1st Jan., 1857, be transferred to and vested in the courts of the diocese wherein such archidiaconal, commissariat, peculiar, and manorial courts are respectively situate; and, subject to such transfer of jurisdiction as aforesaid, the provisions of the 10 & 11 Vict., c. 98 shall continue until the 1st Aug., 1857. Provided that such transfer of jurisdiction to the diocesan courts shall not be deemed or taken in any manner to preclude or impede the passing of any future act for the abolition or modification of the said diocesan courts. And provided that it shall be lawful for such archidiaconal, commissariat, peculiar, and manorial courts to complete any duty commenced before the 1st Jan. 1857, and to grant probate of any will or letters of administration of any estate duly applied for before that day.

2. That the judges, deputy judges, registrars, deputy registrars, and other persons holding office in any court whose testamentary jurisdiction is hereby abolished, may send in a statement to the Commissioners of the Treasury of the average amount of the fees of their respective offices for the period of six years before the 1st Jan., 1857, and of the nature and tenure of their office, and the said commissioners shall forward such statement to the officers of the diocesan court to which the testamentary jurisdiction

is hereby transferred, and the said commissioners shall award the annual sum that should be paid by way of compensation to each one of the officers of the courts whose testamentary jurisdiction is so transferred as aforesaid, having regard to the said average annual value of the fees, and to the nature and tenure of the office, and upon the principle that the compensation so awarded shall be a fair equivalent for the loss caused to such officer by such transfer as aforesaid.

3. And such compensation shall be paid in manner following, that is to say—the compensation of the judges and deputy judges of every court the testamentary jurisdiction of which is hereby abolished shall be paid out of the fees that after this act comes into operation shall be payable to the judge of the diocesan court to which the testamentary jurisdiction is transferred, and such compensation shall be due and payable at such times and in such manner as the said commissioners shall award, and shall be deemed and taken in every court of law and equity to be a charge upon such fees; and in like manner the compensation of the registrars, deputy registrars, and other officers in the courts whose testamentary jurisdiction is transferred shall be a charge upon and shall be paid out of the fees of the corresponding officers in the diocesan courts to which the jurisdiction is transferred respectively.

## LAW OF ATTORNEYS AND SOLICITORS.

### LIABILITY OF MORTGAGOR TO PAY MORTGAGEE'S SOLICITOR'S COSTS ON ABORTIVE MORTGAGE.

THIS was an action for work and labour as an attorney, and for money paid, to which the plea was *never indebted*. It appeared that the claim arose out of a proposed mortgage transaction, the defendant being the proposed mortgagor, and the plaintiff the solicitor for the proposed mortgage. It was admitted that the negotiation went off by the default of the defendant.

*Williams, J.*, who presided at the trial, told the jury that where a mortgage transaction was completed, the usual course was that the charges of the mortgagee's solicitor were paid out of the money advanced; but he did not state (nor was he asked so to do) what happened when the transaction went off, as it had done in the present case.

The defendant obtained a verdict, and this was a motion for a new trial.

*Jervis, C. J.*, said—"I am of opinion that there should be no rule in this case. Ordinarily, the contract is, that the party who employs the solicitor shall pay his charges. In the case of a mortgage, where the negotiation goes on, and the money is advanced, the charges of the mortgagee's solicitor are deducted out of the advance. If the mortgagor were insolvent, it could hardly be contended that the mortgagee would not be liable to his own solicitor. The proper remedy of the plaintiff in this case was against his own client, who might have recovered over against the now defendant. I see no misdirection; and, as my brother *Williams* has not expressed himself dissatisfied with the verdict, there is no ground for disturbing it."

*Cresswell, J.*, concurred.

*Crowder, J.*, said—"The only implied contract here as to mortgagee's expenses would be between

the mortgagor and the mortgagee: there is none as between the mortgagor and the mortgagee's solicitor.\* The intention of the parties, as evidenced by the correspondence, was to look to a completed transaction. So, with regard to the evidence of usage, it all related to transactions which resulted in the advance of the money."

Willes, J., added—"I am of the same opinion. The case of *Grisell v. Robinson*, 8 N. C. 10; 8 Scott, 329, is almost in point. There, pending a negotiation between the defendant and one P for a lease of certain premises belonging to the latter, P died; a suit in chancery was instituted for the purpose of carrying his will into effect; the agreement between the defendant and P not being in writing, and therefore not capable of being enforced in equity, the plaintiffs, the executors of P, consented to grant the defendant the lease upon the terms originally agreed on by their testator. The lease was accordingly prepared by their solicitor, and executed, but was retained by him, a part of the purchase money remaining unpaid. The defendants afterwards paid the balance of the purchase money, and demanded the lease, but refused to pay the expenses of preparing it. The plaintiffs having paid the expenses out of a fund in Chancery belonging to them as executors; it was held, that, on proof of the usual course of business in such cases being for the lessor's solicitors to prepare the lease, and for the lessee to pay the expenses, the plaintiffs were entitled to recover the amount as money paid to the defendant's use; 'for,' says *Tindal, C. J.*, 'the payment was made in respect of a lease for which the defendant was ultimately bound to pay, and for which the plaintiffs were compellable to pay in the first instance, by virtue of the privity between them and Taylor.' I think the case was properly left to the jury, and there is no ground for quarrelling with their verdict."

*Wilkinson v. Grant*, 18 Com. B. 819.

## LAW OF COSTS.

### OF GARNISHEES UNDER COMMON LAW PROCEDURE ACT, 1854.

A PLAINTIFF obtained judgment in an action brought against him by one Curtis, and a rule was made absolute for leave to proceed against a garnishee under the 17 & 18 Vic., c. 125, s. 64. A writ was

\* See *Pratt v. Vizard*, 5 B. and Ad. 808; 2 N. and M. 455. There, A, wishing to borrow money on a mortgage of land, delivered the title deeds to B, the intended mortgagee, for examination, and said that he would pay the expenses. B handed the deeds to his own attorney to be investigated. The negotiation went off, and the attorneys being requested by A to return his deeds, refused to do so till he paid their bill of costs. On assumpsit brought by A against the attorneys, to recover back the money so paid, it was held that the defendants could not be considered as having acted for both parties in the negotiation, and therefore had not a lien against A as his attorney; that supposing A was liable to B for the costs incurred, B could not communicate to his own attorney a lien upon A's deeds, by handing them to the attorney for investigation; that the undertaking of A to B, if it amounted to a promise to pay these costs, did not entitle B's attorneys to detain the deeds, as it established a privity between them and A; and that A might have brought trover for the deeds, and was entitled to recover in that action. Lord Denman says:—"Whether or not the defendant in this case had a lien on the title deeds depends upon the question whether or not the plaintiff employed the defendants to do his work in respect of those deeds. Now, the evidence shews that he did not. Their employment was for the intended mortgage, and rather against than for the mortgagor. And, though there was a letter in which the mortgagor expressed himself willing to pay the expenses, that was addressed to the adverse party, and does not establish any privity between the mortgagor and the attorneys of the mortgagee."

issued, and the plaintiff declared. The defendant demurred to the declaration, and obtained judgment, but no mention was made of costs. The Master having taxed the defendant his costs, a rule was obtained to review the taxation.

*Pollock, L. C. B.*, said:—"The rule must be discharged. According to the practice in courts of equity, where the court has given the liberty of bringing an action at law, which in its form imports the carrying of costs, the successful party is entitled to costs unless the order of the court deprives him of his right. That being the principle, we are now called upon to say whether the defendant in this case is entitled to have his costs taxed. I am of opinion that he is, and that there is no occasion for the court to exercise any discretion on the subject."

*Johnson v. Diamond*, 11 Exch. 481.

## ORDER FOR TRANSFER OF CAUSES.

Monday, July 14, 1884.

Whereas, from the present state of the business before the Vice-Chancellors Sir William Page Wood and Sir John Stuart respectively, it is expedient that a portion of the causes standing for hearing before the Vice-Chancellor Sir William Page Wood, should be transferred to the Vice-Chancellor Sir John Stuart. Now I do hereby order, that the several causes mentioned in the schedule herunto subjoined, be accordingly transferred from the book of cases standing for hearing before the Vice-Chancellor Sir William Page Wood to the Book of Causes for hearing before the Vice-Chancellor Sir John Stuart.

CRAWFORTH, C.

SCHEDULE.		
Plaintiff.	Defendant.	
Levy	Lamb	Motion for decree
Crace	Crace	Cause
Binsteed	Mollrum	Motion for decree
Browne	Browne	Cause
Walter	Whylrow	Motion for decree
Webb	Kirby	Ditto
Coles	Harrison	Ditto
Dentt	Crafts	Ditto
Shorting	Duppa	Ditto
Auber	Harrison	Cause
Wheeler	Howall	Motion for decree
Amies	Hall	Ditto
Jennings	Baldoley	Ditto
Sturgis	Mountcashell	Ditto
Staite	Capel	Cause

CRAWFORTH, C.

## NOTES OF THE WEEK.

### ABOLITION OF THE OFFICE OF CURSOR BARON OF THE EXCHEQUER.

A BILL has been introduced since the death of the Right Honourable George Bankes, the late Curator Baron, proposing that the office shall be abolished, and that any duty or act which might have been performed by the Curator Baron shall be performed by any baron of the coil of the Court of Exchequer, or by any officer of that court, as such court shall from time to time determine.

### LAW APPOINTMENTS.

The Queen has been pleased to appoint J. Trowell Gilbert, Esq., to be Solicitor-General for the colony of British Guiana; and Henry Tudor Davies, Esq., to be Chief Magistrate for the colony of Hong Kong. —(From the *London Gazette* of 16th July.)

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

*Hodgson v. Smithson*, July 10, 1856.

MOTION TO VARY DECREE OF COURT BELOW BY PERSON NOT PARTY TO RECORD.

An inquiry had been directed upon motion for decree as to the next of kin of a testator, and the chief clerk certified that A was the person next entitled to take out letters of administration to B, who was such next of kin. No letters of administration had been taken out by A, nor was there any personal representative of B. The Lords Justices gave A leave on motion *ex parte* to move to vary the decree of the Court below, although he was not a party to the record.

It appeared that under the decree made by the Master of the Rolls, on motion under the 15 & 16 Vict., c. 85, s. 15, an inquiry was directed as to the next of kin of a Colonel Hill, and that the chief clerk found that there was no personal representative of the next of kin, but that the present applicant was entitled to take out letters of administration to her, although none had been taken out.

Bristow now moved on his behalf *ex parte*, for leave to vary the decree.

The Lords Justices granted the application, but without prejudice to the question of defective administration.

## Master of the Rolls.

*In re Hadland's settlement*. June 30, 1856.

TRUSTEES RELIEF ACT—PETITION—TENANT FOR LIFE—REMAINDER-MAN—COSTS.

The costs of a petition by a tenant for life for payment of the dividends to him for life are payable out of the income, but of the remainder-man appearing on the petition, and of the trustees both of appearing and paying the money in, are payable out of the corpus.

A FUND (to the dividends of which the petitioner was entitled for life) had been paid into Court by the trustees, under the 10 & 11 Vict., c. 96.

Waller now appeared in support of his petition for payment of the dividends to him for life.

W. Pearson for the remainder-man; Smith for the trustees.

The Master of the Rolls, in making the order, said that the costs of the petitioner must be paid out of the income, and the costs of the trustees, both of paying in and appearing on the petition, and of the remainder-man, must come out of the corpus.

*Morland v. Richardson*. July 10, 14, 1856.

BURIAL GROUND—INJUNCTION TO RESTRAIN PAVING BY TRUSTEES.

An injunction was granted *ad interim* to restrain the trustees of a burial ground, which had been closed by order of the Secretary of State, under the 15 & 16 Vict., c. 85, from making use of the tombstones of family graves, belonging to the plaintiffs, for the purpose of paving the burial ground.

This was a motion for an injunction *ad interim* to

restrain the trustees of the Tottenham Court Road Chapel from building on the burial ground attached thereto, or making use of the tomb-stones for paving the burial ground. It appeared that the five plaintiffs had purchased family graves there, and that upon the ground being ordered by the Secretary of State to be closed, under the 15 & 16 Vict., c. 85, the defendants had given notice of their intention to build thereon, and had removed some of the tomb-stones for the purpose of paving it over.

R. Palmer and Greene in support; Follett and Ellis *contra*. Cur. ad. vult.

The Master of the Rolls said that the motion would be granted, but recommended the parties to come to some arrangement, as the defendants did not desire indecently to molest the graves, and no injury could be sustained by having the graves properly paved over.

## Vice-Chancellor Kindersley.

*Wilks v. Groom*. July 8, 1856.

WILL—CONSTRUCTION—ANNUITY—"CLEAR YEARLY SUM"—FREE OF LEGACY DUTY.

A testator directed his trustees under his will to pay one annuity or clear yearly sum of £100 to the plaintiff for her life, and after her decease the principal as therein directed: Held that the annuity was payable to the plaintiff free of legacy duty.

THE testator, John Hooper, by his will devised and bequeathed all his real and residuary personal estate to two trustees upon trust, after making the payments thereby directed, to pay one annuity or clear yearly sum of £100 to the plaintiff for her separate use for her life, and after her death to pay the principal to the person therein mentioned. The question was now raised whether the annuity was to be paid free of legacy duty.

Baily and G. Collins for the plaintiff; Selwyn and R. W. Moore for the party entitled to the principal on the death of the annuitant.

Glaes for the defendant; Swanston and Cracknell for the legatees; Wickens for a purchaser.

The Vice-Chancellor said, that in accordance with the decision of *Haynes v. Haynes*, 8 De G. McN. & G. 590, the annuity was payable free of legacy duty.

*In re Protestant Life Assurance Association*.

July 11, 1856.

PETITION TO WIND UP LIFE ASSURANCE ASSOCIATION—"SOCIETY"—AMENDING—ORDER DE NOVO.

On a petition to wind up a life assurance association it was improperly described as a company, and an order was made accordingly: An application was refused to amend the order, but an order was made *de novo*—costs out of the estate.

It appeared that on this petition to wind up the above life assurance association it was erroneously

described as a company, and that an order had been made to that effect.

Baily and Roxburgh now applied to amend the order.

The Vice-Chancellor (after consulting Mr. Registrar Colville) said that it would be better to make an order *de novo*—costs of the estate.

### Vice-Chancellor Wood.

*Gough v. Davies.* July 11, 1856.

CROWN.—COSTS OF UNSUCCESSFUL CLAIM TO PROPERTY OF PARDONED CONVICT.

*The Crown was held not entitled to costs on an unsuccessful claim to the personal property of a convict, who had been pardoned by the governor of a penal colony.*

IN this case (reported *ante*, p. 119) the Crown had claimed certain personal estate under a will, to which a convict, who had received a pardon from the Governor of New South Wales, was entitled. The claim having been disallowed, a question now arose, on further directions, as to the costs of the Crown.

*Wickens* for the Attorney-General; *Cairns* and *Cox* for the convict; *Chandless, Willcock, Torriano, Sheffield, Shee, Southgate*, and *F. A. Williams* for other parties.

The Vice-Chancellor said it was true that the Attorney-General had been brought here, and could not disclaim, but that when he knew the convict had been pardoned, he should have foreborne to press the argument. He, however, raised the question and failed, and must be treated like any other unsuccessful claimant, and could not have his costs of appearance.

*Sudbury v. Brown.* July 11, 1856.

WILL.—CONSTRUCTION—"JEWELLERY"—GOLD AND SILVER COINS.

*Held, that gold and silver coins found by the executors in a bag locked up in the testator's strong box did not pass to the legatees under the bequest by such testator of all his household furniture, plate, linen, china, pictures, and "jewellery."*

A TESTATOR by his will bequeathed to a legatee all his household furniture, plate, linen, china, pictures, and jewellery. It appeared that after his death his executors found certain gold and silver coins in a bag locked up in his strong box, and the question was now raised whether they passed as "jewellery."

*Batten* for the executors; *W. D. Lewis* for the legatee.

The Vice-Chancellor said that if the coins had been exhibited in a case or under a frame, they might have passed as "furniture," but here they could not be considered as "jewellery."

### Court of Queen's Bench.

*Edwards v. Wakefield.* June 10, 1856.

COMMON LAW PROCEDURE ACT, 1854.—INTERROGATORIES.—TITLE TO SUE IN TROVER.

*Leave was refused to the defendant in an action of trover by the assignees of a bankrupt, to deliver interrogatories under the 17 & 18 Vict. c. 125, s. 51, for the purpose of discovering what case they intended to set up as entitling them to recover, and also whether they claimed on the ground of a delivery to the defendant by the bankrupt after an act, and what act, of bankruptcy, and when the same was committed.*

This was a rule nisi for leave to the defendant in this action of trover by the assignees of the bankrupt, to recover certain bills and goods, to deliver interrogatories under the 17 & 18 Vict. c. 125, s. 51,\* for the purpose of discovering what case they intended to set up as entitling them to recover, and also whether they claimed to recover on the ground of a delivery to the defendant by the bankrupt after an act, and what act, of bankruptcy, and when the same was committed.

*Aspland* shewed cause against the rule, which was supported by *J. Brown* and *Terrell*, citing *Flicker v. Fletcher*, 25 Law J., N. S., Exch. 94.

The Court (after taking time to consider) said that the motion was not authorised by the section, which only applied where the parties could be called as witnesses, and was not intended to enable a defendant to ask a plaintiff how he proposed to ground his case, and by what evidence he meant to support his claim. Besides, the discovery under the section was limited to cases where a discovery would be given in equity, which clearly would not be compelled in the present case. The rule would, therefore, be discharged.

### Court of Exchequer.

*Hill v. Cowdry.* June 17, 1856.

BILL OF SALE—BREACH OF COVENANT NOT TO INCUMBER—DECLARATION OF INSOLVENCY.

*Held, on demurrer to the declaration, that a covenant in a bill of sale, that the defendant would do no act whereby the furniture and other effects assigned might be charged, incumbered, or in any way prejudicially affected, is breached by his filing a declaration of insolvency, which by the 12 & 13 Vict. c. 106, s. 70, is an act of bankruptcy, inasmuch as the furniture, &c. passed to the assignees as being in his possession as registered owner.*

THIS was a demurrer to the declaration in an action to recover damages for the breach of a covenant in a bill of sale that the defendant had not done nor would do or cause to be done any act, deed, matter, or thing whereby the furniture and other effects assigned by the bill of sale might or could be charged, incumbered, or in any way prejudicially affected. It appeared that the defendant subsequently, and while the goods were in his possession, filed a declaration of insolvency, which by the 12 & 13 Vict. c. 106, s. 70, is an act of bankruptcy.

*Petersdorff* for the defendant in support of the demurrer; *Hayes, S. L.* contra.

The Court said, the effect of the defendant's filing the declaration was that the goods passed to his assignees as having been in his possession as registered owner, and that therefore the assignment was prejudicially affected. The plaintiff was accordingly entitled to judgment.

\* Which enacts that "in all cases, in any of the superior courts, by order of the Court or a Judge, the plaintiff may, with the declaration, and the defendant may, with the plea, or either of them by leave of the Court or a Judge, may at any other time, deliver to the opposite party or his attorney (provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matters of interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or, in case of a body corporate, any of the officers of such body corporate, within ten days, to answer the questions in writing by affidavit, to be sworn and filed in the ordinary way."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, JULY 26, 1856.

### PROROGATION OF PARLIAMENT.

It appears that before these pages can be submitted to our readers, or within a few hours thereof, the Houses of Parliament will be prorogued; and, as we shall next week have occasion to review the whole labours of the Session, we shall now advert only to the prominent measures which have been under discussion since last week.

Some Bills, in addition to those included in our previous list, have received the Royal assent. The most important of these is the Joint Stock Companies Act, of which we give an analysis in subsequent pages, with part of the act itself. Notwithstanding the clamour against this bill, we rejoice that it has passed, both for the sake of the profession and the public.

The Police Counties and Boroughs Bill has also passed the three estates of the realm; and we trust the objections to the measure have been satisfactorily removed.

To these may be added, the Advowsons Bill; the Repeal of the Obsolete Statutes Bill; the Grand Juries Bill; and the Turnpike Trusts Bill.

Several bills relating to *Scotland* have also been passed, namely, the Mercantile Law Bill; the Small Debts Imprisonment Bill; Procedure before Justices; and the Court of Exchequer. In regard to *Ireland*, another Inumbered Estates Act has also passed.

The bills which have passed the Lords and Commons, and are waiting for, or have just received, the royal assent, are as follow:—

Leases and Sales of Settled Estates. We trust that this useful amendment of the law is now safe from all further difficulty.

Intestates Personal Estates.

Joint Stock Banks.

Evidence in Foreign Suits.

Stamp Duties on Articles of Clerkship and Proxies.

Charity Trusts.

Corrupt Practices Prevention.

General Board of Health.

Annual Indemnity.

There are also a few other bills, the fate of which (at the time we write) appears to be uncertain. These are,

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The Married Women's Reversionary Interest Bill.

Charitable Uses.

Scotch Marriages.

Dissenters Marriage and Registration.

Criminal Justice.

We have not yet seen the final alterations made in the County Court Acts Amendment Bill. We fear that whilst, on the one hand, the county court practice has not been sufficiently improved; on the other, further mischief has been done to the jurisdiction and practice of the superior courts, without any corresponding benefit to the suitors. If the superior court be ousted of its jurisdiction under £20, where the debtor resides at a distance from the creditor, great injustice will be done. How can a wholesale merchant or manufacturer, who gives credit to persons in all parts of the kingdom, enforce payment, if he must sue the debtor in his own district? Rather than incur the expense and inconvenience of sending his witnesses to various country towns, to the interruption of his other affairs, and the risk of losing the very inadequate costs allowed against the defendant, he will abandon his claim. The supporters of the county courts, denying all resort to the supreme courts, where, in undefended actions, the costs are less than in the local courts, have overshot the mark, and will find in another session that they must retrace their steps.

We presume that as the amount of costs to be allowed is placed in the hands of the judges of the county courts, with the Lord Chancellor's sanction, they will frame a liberal scale in order to induce the practitioners, particularly in the country, to resort to those tribunals; but, as already stated, it is impossible to bring down the costs in undefended actions lower than the amount allowed in the common law courts, unless they refuse nearly all professional remuneration. The consolidated fund, however, is to bear the weight of the judges' salaries, and, consequently, the fees may be considerably reduced.

The measures which have been actually withdrawn or negatived during the past week are—

The Ecclesiastical Courts Bill.

The Divorce and Matrimonial Causes Bill.

The Law of Partnership Bill.



**The Drainage Act Amendment Bill.**

**The Trust Property Criminal Appropriation Bill.** This latter measure has been postponed on account of an important difficulty suggested as applicable to suits in Chancery in which trustees are called to account, and who might shelter themselves by declining to answer questions which would tend to their criminal conviction.

Though not formally withdrawn, we presume the following bills will unavoidably stand over till another session :—

Copyhold Enfranchisement.

Church Discipline.

Procedure and Evidence.

Public Prosecutors.

Medical Qualification and Registration.

The Lord Chancellor made an explanatory statement on Monday last of the progress made by the Statute Law Commissioners, to which we shall direct attention in an early number. Several bills for the consolidation of statutes on various important branches of the law have already been prepared, and will be printed for consideration before the next session. Amongst these the most important to the practitioner seems to be the complete consolidation of the stamp laws. If this can be achieved next session, a great public and professional benefit will be conferred.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### JOINT STOCK COMPANIES.

19 & 20 Vict. c. 47.

#### ANALYSIS OF THE ACT.

1. Short title of act.
2. Act not to apply to banking and insurance companies.
- I. CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS.
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3. Company formed by memorandum of association and registration.
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5. Matters required to be prescribed by memorandum of association.
6. Prohibition against identity of names in registered companies.
7. Form of memorandum of association.
8. Shares to be taken by subscribers of memorandum of association.
9. Special regulations may be prescribed by articles of association.
10. Form and effect of articles of association.
11. Stamp on memorandum of association and articles of association, and use of printed copies.
12. Registration of memorandum of association and articles of association.
13. Effect of registration.
14. Directors to be liable for debts if dividend be

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15. Issue of shares by company (8 Vict. c. 16, s. 6 and 7).\*

#### *Register of Shareholders.*

16. Register of shareholders.
17. Annual list of shareholders on register.
18. Penalty on company not keeping a proper register.
19. Restrictive definition of shareholder (8 Vict. c. 16, s. 20).
20. Transfer of shares (8 Vict. c. 16, s. 14).
21. Certificate of shares (8 Vict. c. 16, ss. 11 and 12).
22. Calls a debt to company.
23. Inspection of register.
24. Power to close register (8 Vict. c. 16, s. 17).
25. Remedy for improper entry or omission of entry in register.
26. Register to be evidence.
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36. Copies of special resolutions.
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38. Prohibition against holding land.
39. Prohibition against carrying on business with less than seven shareholders.
40. Evidence of proceedings at meetings (8 Vict. c. 16, s. 98).

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41. Contracts, how made.

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42. Execution of deeds abroad.
43. Promissory notes and bills of exchange (7 & 8 Vict. c. 110, s. 45).
44. Mortgages according to English law.
45. Bond and disposition in security according to Scotch law.
46. Conveyances according to English law.
47. Disposition of security according to Scotch law (8 Vict. c. 16, s. 132).

#### *Examination of Affairs of Company.*

48. Examination of affairs of company by inspectors

\* These references are made to corresponding clauses in former acts.

appointed by the Board of Trade (New York Statutes, Part L, chap. xviii, title 2, a. 176).

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The following are the title, preamble, and sections of the act:—

An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.

July 14, 1855.

Whereas it is expedient that the law relating to the incorporation and regulation of joint stock companies and other associations should be consolidated and amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purposes as "The Joint Stock Companies Act, 1856."

2. This act shall not apply to persons associated together for the purpose of banking or insurance.

## PART I.—CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS.

*Registry.*

8. Seven or more persons, associated for any law-

ful purpose, may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this act in respect of registration, form themselves into an incorporated company, with or without limited liability.

4. Not more than twenty persons shall, after the third day of November, one thousand eight hundred and fifty-six, carry on in partnership any trade or business having gain for its object, unless they are registered as a company under this act, or are authorised so to carry on business by some private act of Parliament or by royal charter or letters patent, or are engaged in working mines within and subject to the jurisdiction of the stannaries; and if any persons carry on business in partnership contrary to this provision, every person so acting shall be severally liable for the payment of the whole debts of the partnership, and may be sued for the same without the joinder in the action or suit of any other members of the partnership.

5. The memorandum of association shall contain the following things: (that is to say)

i. The name of the proposed company;

ii. The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be established;

iii. The objects for which the proposed company is to be established;

iv. The liability of the shareholders, whether it is to be limited or unlimited;

v. The amount of the nominal capital of the proposed company;

vi. The number of shares into which such capital is to be divided, and the amount of each share; subject to the following restriction:

That in the case of a company formed with limited liability, and hereinafter called a limited company, the word "limited" shall be the last word in the name of the company.

6. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive; and if any company, through inadvertence or otherwise, is registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

7. The memorandum of association shall be in the form marked A in the schedule hereto, or as near thereto as circumstances admit, and it shall, when registered, bind the company and the shareholders therein to the same extent as if each shareholder had subscribed his name and affixed his seal thereto or otherwise duly executed the same, and there were in such memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to conform to all the regulations of such memorandum, subject to the provisions of this act.

8. Every subscriber of the memorandum of association shall take one share at the least in the

company: the number of shares taken by each subscriber shall be set opposite his name in such memorandum of association, and upon the incorporation of the company he shall be entered in the register of shareholders hereinafter mentioned as a shareholder to the extent of the shares he has taken.

9. The memorandum of association may be accompanied by, or have annexed thereto or endorsed thereon, articles of association, signed by the subscribers to the memorandum of association, and prescribing regulations for the company; but if no such regulations are prescribed, or so far as the same do not extend to modify the regulations contained in the table marked B in the schedule hereto, such last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company, and shall bind the company and the shareholders therein to the same extent as if they had been inserted in articles of association, and such articles had been registered.

10. The articles of association shall be in the form marked C in the schedule hereto, or as near thereto as circumstances admit: they shall, when registered, bind the company and the shareholders therein to the same extent as if each shareholder had subscribed his name and affixed his seal thereto or otherwise duly executed the same, and there were in such articles contained, on the part of himself, his heirs, executors, and administrators, a covenant to conform to all the regulations of such articles, subject to the provisions of this act.

11. The memorandum of association and the articles of association shall respectively bear the same stamps as if they were deeds: any person signing a printed copy of the memorandum of association or articles of association shall be deemed to have signed such memorandum and articles respectively, and where the proper stamp has been duly fixed on such memorandum of association or articles of association it shall not be necessary to stamp any printed copy so signed: the execution by any person of the memorandum of association or articles of association shall be attested by one witness at the least; and attestation by one witness shall be sufficient attestation in Scotland as well as in England and Ireland.

12. The memorandum of association and articles of association shall be delivered to the registrar of joint stock companies, who shall retain and register the same: there shall be paid to the registrar of joint stock companies, in respect of the several matters mentioned in the table marked D in the schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct; and all fees so paid shall be paid into the receipt of her Majesty's exchequer, and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

13. Upon any such memorandum of association, either with or without articles of association as aforesaid, being registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become shareholders in the company, shall thereupon be a body corporate by the name prescribed in the memorandum of association, having a perpetual succession and a common seal, with power to hold lands; but with such pecuniary liability on the part of the shareholders as is hereinafter mentioned: the certificate of incorporation given by the registrar shall be conclusive evidence

that all the requisitions of this act in respect of registration have been complied with; and the date of such certificate shall be deemed to be the date of the incorporation of the company.

14. If the directors of any such company shall declare and pay any dividend when the company is known by them to be insolvent, or any dividend the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office: provided always, that the amount for which they shall all be so liable shall not exceed the amount of such dividend; and that if any of the directors shall be absent at the time of making the dividend or dividends so declared or paid, or shall object thereto, and shall file their objection in writing, with the clerk of the company, they shall be exempted from the said liability.

15. As soon as a certificate of incorporation has been granted by the registrar of joint stock companies, the company may issue certificates of shares to the subscribers to the memorandum of association, and to all other persons to whom shares may be allotted, of such number and amount as may be prescribed by the memorandum of the association, but not of any greater number or amount. The shares so issued shall be personal estate, and shall not be of the nature of real estate; and each share shall be distinguished by its appropriate number.

#### *Register of Shareholders.*

16. Every company registered under this act, hereinafter referred to as "the company," shall cause to be kept in one or more books a register of shareholders, and there shall be entered therein the following particulars:—

- i. The names, addresses, and occupations, if any, of the shareholders in the company, and the shares held by each of them, distinguishing each share by its number;
- ii. The amount paid on the shares of each shareholder;
- iii. The date at which the name of any person was entered in the register as a shareholder.
- iv. The date at which any person ceased to be a shareholder in respect of any share.

17. Once at the least in every year a list shall be made of all persons who on the fourteenth day succeeding the day on which the ordinary general meeting of the company, or, if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are holders of shares in the company; and such list shall state the names, addresses, and occupations of all the persons therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

- i. The amount of the nominal capital of the company, and the number of shares into which it is divided;
- ii. The number of shares taken from the commencement of the company up to the date of the summary;
- iii. The amount of calls made on each share;
- iv. The total amount of calls that have been received;
- v. The total amount of calls unpaid;
- vi. The total amount of shares forfeited.

The above list and summary shall be contained in a separate part of the register, and shall be in the form

marked E. in the schedule hereto, or as near thereto as circumstances admit; such list and summary shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy thereof authenticated by the seal of the company shall be forthwith forwarded to the registrar, and any person may inspect and take copies of the same, subject to the regulations under which a person is herein-after declared to be entitled to inspect and take copies of any documents kept by the registrar.

18. If any company registered under this act makes default in keeping a register of shareholders, or in sending a copy of such list and summary as aforesaid to the registrar, in compliance with the foregoing rules, such company shall incur a penalty not exceeding five pounds for every day during which such default continues.

19. No notice of any trust, express, or implied, or constructive, shall be entered on the register or receivable by the company; and every person who has accepted any share in a company registered under this act, and whose name is entered in the register of shareholders, and no other person (except a subscriber to the memorandum of association in respect of the shares subscribed for by him) shall, for the purposes of this act, be deemed to be a shareholder.

20. The transfer of any share in the company shall be in the form marked F. in the schedule hereto, or to the like effect, and shall be executed both by the transferor and transferee. The transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

21. A certificate, under the common seal of the company, specifying any share or shares held by any shareholder, shall be *prima facie* evidence of the title of the shareholder to the share or shares therein specified.

22. The amount of calls for the time being unpaid on any share shall be deemed to be a debt due from the holder of such share to the company.

23. The register of shareholders commencing from the incorporation of the company shall be kept at the registered office of the company herein-after mentioned; except when closed as herein-after mentioned, it shall, during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any shareholder gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe for each inspection; and every such shareholder or other person may require a copy of such register, or of any part thereof, on payment of sixpence for every one hundred words required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues.

24. The company may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of shareholders for any time or times not exceeding on the whole twenty-one days in each year, and the period during which the books are closed shall not be reckoned as part of the time within which a transfer is to be registered.

25. If the name of any person is without sufficient cause entered or omitted to be entered in the register

of shareholders of any company, such person, or any shareholder of the company, may, as respects companies registered in England or Ireland, by motion in any of her Majesty's superior courts of law or equity, and, as respects companies registered in Scotland, by summary petition to the Court of Session, apply to such court for an order that the register may be rectified, and the court may either refuse such application, with or without costs, to be paid by the applicant, or it may be, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion or petition, and any damage the parties aggrieved may have sustained; and if the company makes default or is guilty of unnecessary delay in registering any transfer of shares, they shall be responsible to any person injured by such default or delay for the amount of damage he may thereby have sustained.

26. The register of shareholders shall be evidence of any matters by this act directed or authorised to be inserted therein.

27. Copies of the memorandum of association and articles of association shall be forwarded to every shareholder, at his request, on payment of the sum of one shilling for each copy, or such less sum as may be prescribed by the company.

## PART II. MANAGEMENT AND ADMINISTRATION OF COMPANIES.

### General.

28. The company shall have a registered office, to which all communications and notices may be addressed. If any company registered under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

29. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar of joint stock companies, and recorded by him. Until such notice is given, the company shall not be deemed to have complied with the provisions of this act, with respect to having a registered office.

30. Every limited company registered under this act shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

31. If any limited company registered under this act does not paint or affix, and keep painted or affixed, its name in manner aforesaid, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so painted or affixed; and if any officer of such company, or any person in its behalf, uses any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill

of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

32. A general meeting of the company shall be held once at the least in every year.

33. Any company registered under this act may in general meeting, from time to time, by such special resolution as is hereinafter mentioned, alter and make new provisions in lieu of or in addition to any regulations of the company contained in the articles of association or the table marked B in the schedule.

34. A resolution shall be deemed to be a special resolution of the company whenever the same has been passed by three fourths in number and value of such shareholders of the company for the time being entitled to vote as may be present in person or by proxy (in cases where, by the regulations of the company, proxies are allowed) at any meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such shareholders for the time being entitled to vote as may be present in person or by proxy at a subsequent meeting, of which notice has been duly given, and held at an interval of not less than one month, nor more than three months, from the date of the meeting at which such special resolution was first passed: unless a poll is demanded by at least five shareholders a declaration of the chairman of any such meeting as is mentioned in this section, that a special resolution has been carried, shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company.

35. A copy of any special resolution that is passed by any company registered under this act shall be forwarded to the registrar of joint stock companies, and recorded by him: if such copy is not so forwarded within fifteen days from the date of the passing of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded.

36. A copy of any special resolution shall be given to any shareholder on payment of one shilling, or of such less sum as the company may direct.

37. The company, if authorised so to do by its regulations, may increase its nominal capital in manner directed by such regulations, but notice of any increase so made shall be given to the registrar of joint stock companies within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and the registrar shall forthwith record the amount of such increase: if such notice is not given within the period aforesaid the company shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues.

38. No company that is not for the time being carrying on a trade or business having gain for its object shall be entitled, without the sanction of the Board of Trade, to hold more than two acres of land, but the Board of Trade may empower any such

company to hold lands in such quantity and subject to such conditions as they think fit, and may for that purpose grant a license in the form marked G in the schedule hereto, or to the like effect.

39. If any company registered under this act carries on business when the number of its shareholders is less than seven, for a period of six months after the number has been so reduced, then every person who is a shareholder in such company during the time that it so carries on business after such period of six months shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other shareholder.

40. The company shall cause minutes of all resolutions and proceedings of general meetings of the company to be duly entered in books to be from time to time provided for the purpose, and any such minute as aforesaid, if signed by any person purporting to be the chairman of such meeting, shall be receivable in evidence in all legal proceedings, and until the contrary is proved every general meeting in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened.

#### *Legal Instruments of Company.*

41. Contracts on behalf of any company registered under this act may be made as follows: (that is to say)

- i. Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged;
- ii. Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged;
- iii. Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged;

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

*[To be continued.]*

## PROPOSED NEW CENTRAL STREET.

### NEW COURTS AND OFFICES.

A memorial of the vestry of the Liberty of the Rolls, forming part of the Strand district, was presented to the Metropolitan Board of Works, stating that about four years since Mr. Pennethorne, the surveyor to the late Office of Works, projected a new line of street from Fetter-lane, over a portion of the Rolls Estate, across Chancery-lane, and then along

Carey-street; and in consequence thereof notices were served upon several of the owners of the property in the projected line of street, of an intended application to Parliament for powers to form and carry out such new street.

That in the intended line of new street a portion of the Record Office has been built, and several of the houses standing in the intended line have become untenanted.

That the site on the north side of Carey-street, next Chancery-lane, is the property of the Law Fire Insurance Society, and that the same site of ground is now being cleared, preparatory to the society commencing the erection thereon of their new offices.

That the site on the south side of Carey-street, next Chancery-lane, is the property of the Equity and Law Life Insurance Office, and such last-named insurance office is also desirous of pulling down the houses now standing thereon, and to build their new office.

That adjoining to the last-named site of ground there are several houses the property of the Law Institution, the materials of which have been advertised for sale, previously to their being pulled down, and the Law Society commencing their intended improvement.

That it is desirable that the Metropolitan Board of Works should decide upon the line to be taken in the formation of any intended new street from Fetter-lane, over the Rolls Estate, across Chancery-lane, into and along Carey-street, previously to the erection by the several societies hereinbefore mentioned of their different offices, and the commencement of any improvements by the Law Institution.

That the clearing of the several properties belonging to the several societies affords a more fitting opportunity of arranging with them than if the contemplated buildings are erected and allowed to proceed, not only on the ground of saving of expense, but in order that a uniform line and breadth of street may be preserved.

The memorialists therefore requested the Metropolitan Board of Works to take the facts into their consideration, and determine with all possible dispatch the line to be taken in the formation of any intended new street.

At the meeting of the Metropolitan Board of Works, held in the Council Chamber, Guildhall, on Friday, July 11, Mr. *Thwaites*, president, in the chair, Mr. *Few* introduced a deputation from the Board of Works from the Strand district, and the vestry of the Liberty of the Rolls, on the subject of the proposed new street, by way of Carey-street and the northern side of the new Record Buildings. The memorial shewed that the present time was most favourable to secure ground at the entrance to Carey-street from Chancery-lane.

The memorial was supported by Mr. *Phillips*, on the part of the vestry of the Liberty of the Rolls. Mr. *Bigg* and Mr. *Smedley*, directors of the Law Fire Insurance Company, and an officer from the Equity and Law Life Insurance Company, attended with the deputation, and signified the concurrence of those institutions, upon such terms as might be deemed reasonable, for the purpose of widening both sides of the east end of Carey-street, next Chancery-lane, as part of the proposed central street.

Mr. *Hall* drew attention to the great importance of taking an enlarged view of the subject matter of this memorial, inasmuch as it was not a mere local improvement that was advocated, but one which

would form the centre of a grand thoroughfare from east to west.

The memorial was referred to the Committee of Works, with instructions to report thereon at an early day.

This proposed new street will materially tend to promote the important object of erecting new courts and offices on the site between Carey-street and the Strand. The remaining buildings connected with the Houses of Parliament will soon be completed, except the improvements which are intended to be made on the site of the small and inconvenient courts alongside Westminster Hall. It is palpable that those old courts must be removed. Already the equity courts are abandoned, and the sittings held in Lincoln's Inn and the Rolls Yard; and we trust that in the next session the government will proceed with the new courts on the site lying between Lincoln's Inn and the Temple.

## COPYHOLD ACTS AMENDMENT BILL

(Concluded from page 212).

38. *Arbitration as to Crown Manors.*—In any case in which the commissioners of her Majesty's woods, forests, and land revenues, or either of them, on behalf of her Majesty in right of her crown, or the Chancellor and council of the Duchy of Lancaster, on behalf of her Majesty in right of her said Duchy, shall at any time hereafter have proceeded, in exercise of the powers vested in them, to negotiate the terms for the enfranchisement of any hereditaments held of any manor vested in her Majesty in right of her crown or of her Duchy of Lancaster, either in possession or in remainder expectant on any estate less than an estate of inheritance, and either solely or in coparcenary with any subject or subjects, and a difference of opinion shall arise between the said commissioners or either of them, or the said Chancellor and council, on the one hand, and the tenant of the said hereditaments on the other hand, touching the amount of the consideration money to be paid by the tenant to the said commissioners or to the said receiver general of the Duchy of Lancaster for such enfranchisement, it shall be lawful for the said commissioners or either of them, or for the said Chancellor and council, on the request of the tenant, and upon an agreement for the enfranchisement being entered into by them or him with such tenant, to refer it to the copyhold commissioners to appoint, as they are hereby authorised to do, some practical surveyor to determine the amount of the consideration money to be paid to the said commissioners or the said receiver general of the Duchy of Lancaster for such enfranchisement; and the costs and expenses of and incident to any reference to the copyhold commissioners, to be made as herein-before provided, shall be treated as costs and expenses incurred in the case of a compulsory enfranchisement at the instance of a tenant.

39. *Crown manors.*—Any manor vested in her Majesty in right of her crown in remainder or reversion expectant on an estate of inheritance may, with the consent in writing from time to time of the commissioners of her Majesty's woods, forests, and land revenues, or any one of them, be dealt with under the copyhold acts.

40. *Compensations.*—In every case of an enfranchisement

disment of land held of any manor so vested in her Majesty in remainder expectant on an estate of inheritance, where the compensation under the provisions of the copyhold acts shall be a gross sum of money, the same shall be paid to such two persons as trustees as shall be from time to time nominated for the purpose by the commissioners of her Majesty's woods, forests, and land revenues, or any one of them, and by the person who shall for the time being be entitled to the receipt of the rents and profits of the manor, one of such trustees being from time to time nominated by the commissioners or one of them, and the other of such trustees being from time to time nominated by the person so entitled for the time being: provided always, that in any case in which the commissioners, or one of them, and the person for the time being so entitled, shall not upon the occasion of any enfranchisement agree that the compensation, if payable in a gross sum of money, shall be paid to trustees, the same shall with all convenient speed be paid into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there *ex parte* the Queen's most excellent Majesty and the person so for the time being entitled, and when so paid in the compensation shall remain in the Court of Chancery until, by order of the court to be made in a summary way upon petition, after notice to the commissioners of her Majesty's woods, forests, and land revenues, by the person who may or but for such enfranchisement would have been entitled to the rents and profits of the manor, it shall be applied in manner by this act provided.

41. The compensation money paid for any such enfranchisement shall be applied by any such trustees to be from time to time so nominated, or by direction of the Court of Chancery, if the same shall have been paid into the Bank of England to the credit of the Accountant-General of the court, in the purchase or redemption of land tax affecting other land settled to the like uses as the manor, or in the purchase of land of fee-simple tenure, and convenient to be held with the settled estates; and until such application of the compensation money, it may, by any such trustees, or by the Accountant General of the Court of Chancery, under order of the court, to be made upon application thereto, after notice to the commissioners of her Majesty's woods, forests, and land revenues, be from time to time invested, in the names or name of such trustees or of the Accountant General, in the purchase of or upon government or real securities; and in the meantime and until such securities be sold or realized by the trustees, or pursuant to any order of the court for either of the purposes aforesaid, the income thereof shall be paid by the trustees or by the Accountant General, under order of the court, to the person who for the time being may or but for such enfranchisement would have been entitled to the rents and profits of the manor.

42. Any land to be purchased with any compensation money to be paid or any rent-charge to be granted or awarded as the consideration for any such enfranchisement shall be settled to such uses, upon such trusts, and subject to such powers and provisions as will most nearly correspond with the uses, trusts, powers, and provisions then affecting the other part of the estates comprised in the same settlement as the manor in which such enfranchisement shall be made, and all such uses, trusts, powers, and provisions shall be valid, and have full effect, any law to the contrary notwithstanding.

43. *Enfranchisement deed.*—Upon payment of the compensation money as by this act provided, in any case in which such compensation is made by payment of a gross sum of money or previously to or contemporaneously with the execution of a deed of grant or of an award by the copyhold commissioners of a rent-charge, in any case in which the compensation for an enfranchisement shall be made by way of a rent-charge, the Commissioners of her Majesty's Woods, Forests, and Land Revenues, or any one of them, may concur with the person for the time being entitled to the rents and profits of the manor in executing a deed of enfranchisement to the copyholder of the land to be enfranchised, which shall state in what manner the enfranchisement money, if any, has been applied; and such deed of enfranchisement shall, when a memorial thereof is enrolled as by this act provided, be effectual to vest in the copyholder all the estate, right, and interest of the Queen's Majesty, her heirs and successors, in right of her Crown, and of all other persons interested therein under the settlement of the manor in the land enfranchised, either absolutely or subject to such reservations as may be agreed upon; but nothing contained in this act with reference to enfranchisements by awards of the Copyhold Commissioners shall apply to manors in which her Majesty, her heirs or successors, may have any estate or interest in possession, reversion, or remainder.

44. The keeper of land revenue records and enrolments shall from time to time provide a book or books in which shall be entered a memorial of every deed of enfranchisement of land held of any manor, and of every award or grant of any rent-charge, and of every deed of conveyance which shall be executed upon the purchase of land with monies arising from the enfranchisement of lands within any such manor (such last-mentioned memorial being in every case accompanied by a plan of the land purchased); and every such memorial shall be under the hand of one of the parties to the deed of enfranchisement, or conveyance, award, or grant; and no such deed, award, or grant shall have effect until there be written thereon a certificate signed by the keeper of land revenue records and enrolments, that a memorial thereof hath been lodged at the office of Land Revenue Records and Enrolments; and in the absence of evidence to the contrary of the fact stated therein such certificate shall be admissible in evidence in any court of justice or before any person now or hereafter having by law or by consent of parties authority to hear, receive, or examine evidence, without proof of the signature thereto, or of the fact that the person signing or purporting to sign the same is the keeper of land revenue records and enrolments for the time being; and a copy of the enrolment of the memorial, certified in the manner provided by an act passed in the sixteenth year of the reign of her present Majesty, chapter sixty-two, section eight, shall be receivable as evidence of the deed or facts referred to in such memorial.

45. *Trustee for Crown.*—Every trustee so nominated by the Commissioners of her Majesty's Woods, Forests, and Land Revenues, or one of them, shall be absolutely indemnified by the said commissioners for the time being, out of the rents and profits of the possessions and land revenues of the Crown, of and from all such costs, charges, damages and expenses (if any) as he may in anywise whatsoever incur or be put to in consequence of having been so nominated, and which he may not be able to obtain repayment of out of the trust monies.



46. *Fees.*—The Commissioners of her Majesty's Treasury may direct what reasonable fees shall be from time to time paid in respect of the revision and enrolment, as by this act provided, of any such deed of enfranchisement or conveyance of any land to be so purchased, and such fees shall be deemed to be part of the expenses of the enfranchisement or purchase, as the case may be, and shall be paid or be recoverable accordingly.

47. *Joint tenancy with Crown.*—Any manor vested in her Majesty in right of her Crown in possession, remainder, or reversion, in joint tenancy or coparceny with any subject, may, so far as regards the rights and interests of such subject and of the tenant of such manor, be dealt with under the copyhold acts, and the provision of this act in regard to enfranchisements in manors vested in her Majesty in right of her Crown in remainder or reversion expectant on an estate of inheritance shall apply to manors so vested in her Majesty in joint tenancy or coparceny with any subject, so far as respects the share or interest in any such manor to which her Majesty may be so entitled.

## COUNTY COURTS AMENDMENT BILL.

### PETITION OF HULL LAW SOCIETY.

MR. HADFIELD presented a petition from members of the Hull Law Society and other attorneys practising in Hull, stating that, while the petitioners acknowledge the great advantages conferred on the community by the establishment of the county courts, and regard with satisfaction all measures calculated to promote their further efficiency and usefulness, they are of opinion that the County Court Acts Amendment Bill now before the House requires further consideration and amendment before it is passed into law.

They then state that society at large has a direct and vital interest in the character and respectability of the profession to which the petitioners belong, and that they cannot but feel that some of the provisions of the bill are calculated to injure and humiliate that profession.

With regard to clause five of the bill, the petitioners deprecate the exclusion, by positive enactment, of attorneys and solicitors from the possibility of being appointed to the office of deputy judge of the county courts, an office for which many attorneys and solicitors are by education, legal acquirements, and position well fitted, and their exclusion from which is but one out of many recent instances in which offices of trust and importance formerly open to them have been sedulously closed against them.

Considering the great and increasing importance of the county courts jurisdiction, it would be unjust to the suitors in such courts to pass any measure which would have a tendency either virtually to deprive them of the benefit of professional assistance in the conduct of their causes, or to throw the county courts practice almost exclusively into the hands of the lower grades of the profession.

The thirty-second and thirty-third clauses of the bill would have such tendency, inasmuch as in the majority of cases in which professional assistance is sought and needed, the fees mentioned in the ninety-first section of the act of 9 & 10 Vict., c. 95, are altogether inadequate for preparing a case for trial and conducting it in court; and the petitioners ven-

ture to represent that it would be derogatory to an honourable profession to compel its members, in order to entitle themselves to a fair remuneration for their services, to make a bargain beforehand for the sum to be paid, and to demand from their clients an agreement in writing to pay such sum.

The provisions of clause twenty-five of the bill for obtaining judgment by default unless notice of an intention to defend be given where the demand exceeds £20 might be advantageously extended to cases of demands not exceeding £20.

The petitioners occasionally find themselves inconvenienced and their clients (sutors in the county courts) prejudiced by the provisions of the tenth section of the act 15 & 16 Vict., c. 64, which prohibits, under any circumstances, an attorney other than the attorney acting generally in the action from appearing and acting in court on behalf of a suitor; and the petitioners recommend the insertion in the bill of a clause enabling one attorney to appear and act for another in the court where the attorney of the party is ill, absent from home, resides at a distance, or other special circumstances exist sufficient to satisfy the judge that it is fit and proper that another attorney should so appear and act.

The petitioners also recommend the insertion in the bill of a clause extending the provisions of the sixtieth section of the 9 & 10 Vict., c. 95 (as to summoning parties out of the district by leave of the court), so as to enable the registrar when the court is not sitting to grant such leave on such proof as is now by law required to be given in court.

## EXAMINATION DISTINCTIONS OF ARTICLED CLERKS.

WE understand it is highly probable that in the next, or an early Term, in order to encourage the careful study of the law, the Examiners will select the names of three candidates, not exceeding the age of twenty-five years, who, in passing their examination, may deserve distinction, with a view to enabling the Council of the Incorporated Law Society to present to such candidates a prize of books or other testimonial which may be deemed fit.

We believe that the Masters who preside at these examinations have approved of the proposition, and we thus give the earliest intimation of it; for although this important improvement may not be carried into effect in Michaelmas Term, we are assured that it will not be long delayed; and the additional study which the candidates may be disposed to undergo during the Long Vacation will not be thrown away, even if they should not receive the proposed honorary rewards.

We hope to speak more positively on the subject next week. Parliamentary and other urgent matters, affecting the profession, have, we believe, somewhat delayed a decision on the subject. The details relating to the mode of carrying the suggestion into effect of course require careful consideration, so that the distinctions may be conferred according to certain settled regulations.

## IMPRISONMENT FOR DEBT BILL.

A BILL to amend the law of imprisonment for debt has been brought in by Mr. Pellatt and Mr. Hadfield, proposing to abolish arrest on executions, and to discharge all now in custody.

The proposed enactments are as follow :—

1. The act to come into operation on the seventh day after the passing of the same.

2. No writ of *capias ad satisfaciendum*, or other writ, process, or warrant to arrest the body of any defendant in any action or suit (actions for malicious prosecution, or for deceit, libel, slander, criminal conversation, seduction, or breach of promise of marriage only excepted), shall be issued, founded on any judgment, decree, or order of any of the superior courts of law or equity or any inferior court in England, nor shall any writ, process, or warrant to arrest the body of any plaintiff, defendant, or other person in any action or suit be issued, founded on any judgment, decree, or order of any court of law or equity, or any ecclesiastical or other court, for the recovery of costs, or for the payment of money, whether consisting wholly or partly of costs, or otherwise.

3. In case any such writ, process or warrant to arrest the person (save in any of the cases excepted) have issued before the commencement of this act, founded on any such judgment, decree, or order as aforesaid, and have not been executed before the day of the commencement of this act, such writ, process, or warrant shall not on or after the said day be executed against the person of the party against whom the same was issued.

4. In any case where on the day of the commencement of this act any person is in custody under or by virtue of any such writ, process, or warrant, founded on any such judgment, decree, or order as aforesaid (save in any of the excepted cases), it shall be lawful for the sheriff, gaoler, or officer in whose custody such person is detained, and he is hereby, on the application of such person, required to discharge him forthwith out of custody as to such execution, writ, decree, or order respectively, without prejudice, nevertheless, to any other right to detain such person in custody for any cause for which he may lawfully be so detained; but, notwithstanding such discharge, the judgment, decree, or order whereupon the debtor or party was taken or charged in execution or arrested shall nevertheless remain and continue in force, to the intent that the judgment creditor or person obtaining such decree or order may have and take remedy and execution upon every such judgment, decree, or order against the property and effects of such debtor or party, in the same manner and form as the creditor or person obtaining the decree or order otherwise might have done in case such debtor or party had never been so taken or charged in execution or arrested.

5. In every case of a judgment, decree, or order, under or by virtue of which a defendant or party might, if this act had not been passed, be charged in execution or arrested; and in every case where any defendant or party is discharged from custody as to any such execution, decree, or order, under or by virtue of this act, if the plaintiff or person who has obtained such execution, decree or order have not recovered his demand out of the goods, chattels, or property of such defendant or party, if in any such case the sum due or to be paid under such judgment, decree, or order, inclusive of costs, does not exceed £300, such plaintiff or person may apply to the

county court of the district in which such defendant or party resides for a summons requiring such defendant or party personally to appear at such county court, and to show cause why execution or process of arrest or a committal should not issue against his person in respect of such judgment, decree, or order, as the case may be; and the said county court shall have power to hear and determine the matter; and the service of such summons, and the proceedings in the matter, and the costs of or relating to the same, shall be subject to the like proceedings and regulations, so far as the same are applicable, as any plaintiff in case of debt or assumpsit, save as herein otherwise provided.

6. *Property to be administered under the insolvent acts.*—At the hearing of such matter, if such plaintiff or other person, or such defendant or party, or either of them, appear, the court may cause him to be examined on oath, and shall upon such examination, or upon such other evidence as is offered, investigate the amount of the debts or demands due or owing by or claimable against the defendant or party, and the nature and amount and circumstances of any property, of whatsoever kind, he, or any one in trust for him, is, was, or may be possessed of or entitled to, and the manner and circumstances under which the debt due to the plaintiff or other liability was incurred, and the means and expectation of payment thereof; and if it appear that the said defendant or party, or any one in trust for him, is possessed of or entitled to property of any kind, which, regard being had to the nature, amount, and circumstances of such property, and to the several debts and demands due by and claimable against such defendant or party, and to the security of his several creditors, ought, in the opinion of the court, to be administered under the provisions of the acts relating to insolvent debtors, then and in such case such court may make an order that the property of such defendant or party be vested in the assignee for the time being of the estates and effects of insolvent debtors in England; and may order such defendant or party to be committed, with stay of execution for such time, whether more or less than forty days, to be by such order limited, as to such court may seem fit, and under such order such defendant or party may be arrested and detained in custody accordingly, as in other cases of committal under the 9 & 10 Vict. c. 95, anything herein to the contrary notwithstanding; and a copy of such examination, and of every such order, shall be transmitted to the Court of Insolvent Debtors, and such order for vesting the property of such defendant or party shall operate, and have the same effect, as if the same were made by the Court for the Relief of Insolvent Debtors; and thereupon the assignee of the said Court of Insolvent Debtors shall take possession of the estate and effects of such defendant or party, in like manner as if the same had been vested in him by an order of the said Court of Insolvent Debtors; and the said Court of Insolvent Debtors shall proceed in the case in like manner as if such defendant or party were a prisoner within the walls of a prison, and as if he had petitioned to be discharged from prison, and shall proceed upon such examination as if the same were the schedule of the said defendant or party, filed upon his petition to be discharged under the authority of the court; but it shall nevertheless be lawful for such defendant or party to file a schedule, and to amend the same, under the provisions of the acts for the relief of insolvent debtors.

7. But if such defendant or party do not attend,

as required by such summons, or do not allege a sufficient excuse for not attending, or if he attend and refuse to be sworn, or to disclose any of the things aforesaid, or if he do not make answer touching the same to the satisfaction of the court, such court may order such defendant or party to be committed to the common gaol or house of correction of the county, district, or place in which he is resident, for any period not exceeding two calendar months, unless he sooner submit himself to be examined, or to the authority of the court,

8. And if at any such hearing it appear to the court, either by the examination of such defendant or party, or by any other evidence, that there is not property of such defendant or party which ought, in the opinion of such court, to be administered under the said acts relating to insolvent debtors, or that such defendant or party is not of sufficient ability to discharge the debt or demand, but that in incurring the debt or other liability, he has obtained credit under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had, at the same time, a reasonable expectation of being able to pay or discharge the same, or that he has made, or caused to be made, any gift, delivery, or transfer of any property, or has charged, removed, or concealed the same, with intent to defraud his creditors or any of them, then and in any such case, such court may order such defendant or party to be committed to the common gaol or house of correction of the county, district, or place in which he is resident, for any period not exceeding six calendar months, unless the demand be sooner paid, without prejudice to the remedies for the recovery of the demand out of the property or effects of the said defendant or party.

9. When the demand exceeds £300, the original court to have jurisdiction under this act.

10. In any action in any court, in any case where the power of arrest would otherwise be taken away by this act, if the plaintiff cause a written or printed notice to be annexed to, or endorsed on, the summons or other process by which such action is commenced, stating that he will proceed in such action under the provisions of this act, inserting the title thereof, in such case the court, at the original hearing of the cause, if the judgment be against the defendant, shall have the same power and authority to examine the defendant and plaintiff, or either of them, or other persons, and of making orders for vesting the property of the defendant in the assignee of the estates and effects of insolvent debtors, and for committing such defendant to prison, as is hereinbefore provided for the case where a judgment has been already given.

11. *Defendant about to quit England.*—In any action in any court, or in any case in which a judgment, decree, or order of any court has been had or obtained, where the defendant or party against whom such action is brought, or such judgment, decree, or order is had or obtained, might, if this act had not been passed, be or have been charged in execution or arrested, if the plaintiff or person bringing such action, or obtaining such judgment, decree, or order, shew, by the affidavit of himself or of some other person, or by other proof, to the satisfaction of such court, that there is probable cause for believing that such defendant or party, or any one of any such defendants or parties, is about to quit England, unless he be forthwith arrested or charged in execution, it shall be lawful for such court, upon the hearing of the case, to grant an execution, order, or decree, as

the case may be, against the person of the defendant, or (in the case of an execution, decree, or order having been theretofore had or obtained) by a special order to direct that such defendant or party shall be arrested or charged in execution under such judgment, decree, or order as aforesaid; and thereupon it shall be lawful for the plaintiff or person obtaining such judgment, decree, or order to arrest or charge in execution the said defendant or party against whom the same was obtained, in like manner as such defendant or party might have been arrested or charged in execution if this act had not been passed; but in the case of any such special order for arrest in execution, as last aforesaid, obtained in respect of a judgment, decree, or order theretofore obtained, it shall be lawful for the person so arrested or charged in execution to apply, at any time after such arrest, to the court for a rule or order on the plaintiff or person obtaining such judgment, decree, or order, to show cause why the party arrested under such special order as aforesaid should not be discharged out of custody; and it shall be lawful for such court thereupon, and upon consideration of any further affidavits produced by or on behalf of either of the parties, or upon examination of the parties, or either of them, or of witnesses, to make such order thereon as to such court may seem fit, or to direct the costs of such application to be paid by either party; but if thereupon the party arrested be discharged, such discharge shall be without prejudice to any remedies for the recovery of the plaintiff or party's demand out of the property or effects of the defendant or person so discharged, and the execution, writ, decree, or process against the person may be changed to an execution, writ, decree, or process against such property or effects.

12. Act not to extend to proceedings relating to revenue.

## LAW OF COSTS.

### SECURITY FOR, BY PAUPER NEXT FRIEND OF MARRIED WOMAN.

THIS was a motion by some of the defendants to stay the proceedings in a suit by a married woman suing by her next friend, who was a poor man, until a substantial person should be appointed her next friend, and until the costs of a former suit, which had been dismissed with costs for want of prosecution, had been paid. It appeared that the former bill had been filed for the same purpose as the present, and that the then next friend had died a pauper in a workhouse before the order to dismiss was made.

The Vice-Chancellor Wood said:—"I think, if I had to rely only on the particular circumstances of this case, there is enough to justify my decision; but I would rather decide the case upon the broader ground, and follow the authority of *Sir J. Leach in Pennington v. Alvin*, 1 S. and S. 264, which has been confirmed by Lord St. Leonards and the present Lord Chancellor. I find, in this case, that the parties have been harassed in a former suit, by this plaintiff suing by a person as a next friend, who afterwards died a pauper in a workhouse. Her prosecuting that suit under such circumstances seems to me sufficient, if any special circumstances were necessary, to authorise me to grant this motion.

"But in *Pennington v. Alvin*, Sir John Leach,

though he remarked that it was a gross case, rested his decision simply on the ground that the case of a married woman presented circumstances very different to that of an infant, and that her next friend should be a person of substance. That decision was followed in *Drinan v. Mannix*, 3 Dru. and W. 154, by Lord St. Leonards, in a case where there was fraud on the part of the married woman, in suing without her husband. And I find that the present Lord Chancellor, in *Stevens v. Williams*, 1 Sim. N. S. 545, adopted those decisions, without relying on any special circumstances.

"On the other hand, there is the authority of Lord Langdale, in the case of *Dowden v. Hook*, 8 Beav. 399, passing by *Squirrel v. Squirrel*, 1 Ves. J. 409; 1 P. Wms. 297 n.; because, in that case, though it turns out to have been a case in which a married woman was concerned, no distinction was taken between the cases of married women and infants, and that was so held in old cases in Atkyns and Mosely. I do not find that Lord Thurlow's attention was directed in *Squirrel v. Squirrel*, to the distinction between the cases of a feme covert and an infant. I therefore prefer to follow the later authorities, which I have mentioned. I have found a report of the decision of the Lord Justice Knight Bruce, then Vice-Chancellor, in *Jones v. Fauccett*, 11 Jur. 529, and he is there made to say, after having heard the case of *Dowden v. Hook*, 'Suppose a married woman has a clear right, and cannot obtain any person to be her next friend, what is she to do? I have been much struck by those observations of Lord Langdale. In this case, there is an adjudication that the woman is at least entitled to an inquiry.' That was because a decree for inquiry as to the plaintiff's claim had previously been made. He, therefore, directed security to be given for the costs incurred, which would be a matter of course; but he would not inquire as to the solvency of the next friend, with a view to security for the future costs. Lord Colclough, on appeal, reversed that decision, but declined to give his opinion on the point of discrepancy between the authorities, saying only that the defendant had a right to object to the substitution of a new next friend for the existing next friend. Therefore, there is a decision of Lord Langdale, and the view taken by the Lord Justice Knight Bruce, in opposition to the other authorities on this subject. But the recent decision, that a married woman may sue in *forma pauperis*, without a next friend, introduces a new consideration. In *Dowden v. Hook*, Lord Langdale remarked that, by the practice of the Court, as it then existed, a married woman suing by her next friend, had been permitted to sue in *forma pauperis*, and said that it was, therefore, too much to contend that the next friend must necessarily, in all cases, be a person able to answer any claim against him for costs.

"The circumstances which make a difficulty between the cases of feme covert and an infant are, not only that a feme covert selected her own next friend, but also that this Court is always anxious that cases in which infants are concerned should be brought to its notice, and it has a jurisdiction over suits by infants which it has not in the case of suits by married women, to stay such suits, if not for the infant's benefit, and can, for that purpose, avail itself of any impropriety on the part of the next friend in bringing the suit. But it is not so in the case of a married woman. Her suit must go on, however impossible it may be for the defendant to have any remedy for costs, in case they should be ordered to be paid to him.

"It has been urged, why should the rule be different from that which prevails in the case of a plaintiff who is *sui juris*, who is never called upon to give security for costs on account of his poverty? But the answer is, that in such a case the defendant has, at least, the security of the plaintiff's person; for the plaintiff may be attached and imprisoned, if he does not pay costs when ordered to do so. That cannot be done in the case of a feme covert; and the consequence is, that if the feme covert, who has the power of selecting her next friend, is allowed to sue by a next friend, who is not a person of substance, the defendant may be harassed by an improper suit, without the power of staying it, as in the case where an infant is plaintiff, or of availing himself of the remedy to recover his costs by attachment and imprisonment of the person of the plaintiff, as where the plaintiff is *sui juris*. Now, that it has been decided that a married woman may sue alone in *forma pauperis*, there is very little inconvenience; for, if she has no property under her control, and is unable to procure her next friend, she can sue in *forma pauperis*; and if she has separate property to the amount of £100, she will be able to get some one to act as her next friend; or, upon giving security, she may make a special application, to which the Court would be willing to listen, and the only possible case of grievance would be that of a married woman who possessed property of a value something between £5 and £100, and who could not find any one to act as her next friend. On the other hand, there is the greater grievance of the possibility of persons being harassed improperly by the suit of a married woman suing by a pauper next friend; and balancing these inconveniences, I accede to the decision of Sir John Leach on this subject, followed by Lord St. Leonards and Lord Cramworth, and shall make an order on this motion to stay proceedings, in the form used in *Wilton v. Hill*, 2 De G. McN. and G. 807, and *Stevens v. Williams*, until further order.

"As to the other part of the motion, I find no case which has gone so far, and I therefore cannot grant that part of the motion.

"The order need not mention the costs of this motion, and the costs of the successful party will be costs in the cause. *Hind v. Whitmore*, 2 Kay and J. 458.

## LAW OF ATTORNEYS AND SOLICITORS.

### STRIKING OFF ROLLS OF OTHER COURTS.

This was a motion that John Collins, an attorney of the Court of Common Pleas, might be struck off the roll of that court.

H. J. Hodgson, for the Incorporated Law Society, in support produced a rule striking the attorney off the roll of the Court of Queen's Bench for misconduct.

Jervis, C. J., said—"Out of deference to that court, we do not inquire into the circumstances upon which it acted. The rule may go."

In re John Collins, 18 Com. B. 272.

The following is an abstract of the previous decisions on this subject, for which we are indebted to Mr. Maugham's *Attorney's Handbook* (p. 155):—

If an attorney be struck off the roll of the Court of King's Bench for misconduct, the Court of Common Pleas will make a like order on motion, founded on a copy of the original report of the matter in the

King's Bench (*In re Smith*, 4 J. B. Moore, 819; 1 B. & B. 522). But in *ex parte Hague* (3 Brod. & B. 257; 7 J. B. Moore, 64), the Court refused the application, unless the contents of the affidavits on which the Court of Queen's Bench acted, were stated to them, and proof was produced that the attorney had been struck off for a misdemeanor.

If an attorney be struck off the roll of the King's Bench for misconduct, the Court of Common Pleas will make a like order, on an affidavit stating that fact (*In re Cope*, 4 Law Journ., C. P., 50).

A rule to prohibit an attorney from practising in the Court of Common Pleas was granted on reading a rule to the like effect of the Court of Queen's Bench (*In re Whythead*, 4 Man. and G., 768; 5 Scott, N. R., 289).

An application, on the last day of Term, to strike an attorney off the rolls of the Court, for alleged misconduct, was refused upon the mere production of a similar rule obtained in the Common Pleas. The Court said there must be an affidavit that he was the same person as the one against whom the Court of Common Pleas had granted a rule, and that the motion should have been made so as to give him an opportunity of denying he was the same person (*In re* —, 1 Exch. R. 452).

A rule to strike an attorney off the roll of this Court (Exch.), on affidavit that he had been convicted in the Queen's Bench of a *conspiracy*, and sentenced to be imprisoned, and to have his name struck off the roll of that Court, and that his name had been struck off accordingly, is a rule *nisi*, which makes itself absolute, unless cause be shewn within the time prescribed (*In re Charles Wright*, 1 Exch. R. 658; 5 D. & L. 394).

In bankruptcy the order is only *nisi*, although the rule of another Court, for striking an attorney off the roll, be produced (*In re Mark*, 4 Deac. and C. 482).

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with date when Gazetted.*

Pidecock, Charles, Worcester, in and for the city of Worcester, also in and for the county of Worcester.—July 8.

Tanner, George Nelson, Spenshamland, in and for the county of Berks.—July 4.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From June 24th to July 18th 1856, both inclusive, with dates when Gazetted.*

Cutts, John, Jun., and Henry Druce, 10, South-square, Gray's-Inn, attorneys, solicitors, and conveyancers.—July 18.

Hanlip, Charles, and Job Conworth, 19 Hatton-garden, attorneys, solicitors, conveyancers, and parliamentary agents.—July 1.

## NOTES OF THE WEEK.

### REGISTRATION OF TITLE DEEDS.

On Monday last Lord Lyndhurst said that two or three years ago a bill was introduced by the Lord Chancellor for the registration of title deeds. It was referred to a select committee, and afterwards came down to their lordship's house, where it was passed by a large majority, and then sent down to the other house, but there it was not passed. It appeared that a commission was appointed to inquire into the subject; and the questions he wished to ask were—1st, whether that commission had made a report; 2nd, if not, what was the reason of the delay; and 3rd,

whether there was any probability of a report being made? His lordship added, that he could not sit down without expressing his regret that various important measures which had been introduced into the other House of Parliament, and various other important measures which had been sent down from that house had, during the present session, been either lost or abandoned. He never recollected in any session so wholesale a destruction of measures.

The Lord Chancellor said the answer to the first question was that the commissioners had not made a report. That commission was appointed under the following circumstances. The Registration of Titles Bill passed that house with very general, though not universal, concurrence, but it did not get a very favourable reception in the other House, and it was referred to a select committee, who reported against it, but thought a different plan for the registration of titles would be expedient, and recommended that a royal commission should be appointed to consider how far such scheme was practicable. The consequence was, that in the following year—1844—a commission was appointed to look into the subject, and, as he had already stated, they had not yet made their report.

With regard to the probability of their reporting, he might state that he had communicated with the Solicitor-General and others who were on the commission, and they assured him that the commissioners were looking very attentively into the subject, but that they found, as he confessed he had anticipated, a great deal more difficulty in devising some tangible plan than they at first imagined. He believed, however, that they would make a report, and he understood also that they had embodied the plans which they recommended in the shape of a bill, which would be laid on the table of the house.

He had himself prepared the heads of a bill for a very modified registration, but he was stopped at an early period of the session from introducing it, by the intimation that a report suggesting a more extended scheme would shortly be laid before Parliament; and unless he got that report during the recess he should unquestionably introduce the smaller measure.

With regard to the remark of the noble and learned lord respecting the withdrawal of bills, he shared in the regret he had expressed as to the abandonment of several important measures, but at the same time he was prepared to show that a considerable number of very useful ones had been passed.

### LORD WENSLEYDALE.

It is stated that a new patent will be issued, conferring an hereditary peerage on this eminent lawyer.

### NEW MEMBER OF PARLIAMENT.

Sir Wm. Fenwick Williams, Bart., for Calne in the room of Henry Petty Fitzmaurice (commonly called Earl of Shelburne), who has accepted the office of Steward of her Majesty's Manor of Hestholme.

### LAW APPOINTMENTS.

The Queen has been pleased to appoint Richard Pine, Esq., solicitor, to be Queen's advocate, and police magistrate for her Majesty's settlements in the River Gambia.—(From the *London Gazette* of 18th July.)

Mr. Samuel Heath, solicitor, has been elected clerk to the board of management of the Central London School District, which comprises the City of London and the parishes of St. Saviour's and St. Martin's-in-the-Fields.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

Pratt v. Mathew. July 21, 1856.

## MARRIAGE SETTLEMENT—CONSTRUCTION—WIFE'S NEXT OF KIN.

A sum of £1,000 was settled in default of children who should attain twenty-one or marry, and upon the death of the wife in her husband's life-time, to such persons as would have been entitled to her personal estate, in case she had died unmarried and intestate: Held, dismissing with costs an appeal from the Master of the Rolls, that a daughter surviving the wife who predeceased her husband was entitled to the fund, although she afterwards died under twenty-one, and unmarried, to the exclusion of the wife's brothers and sisters.

UNDER a marriage settlement, a sum of £1000 was settled in default of children, who should attain twenty-one or marry, and, upon the death of the wife in the husband's lifetime, to such persons as would have been entitled to the personal estate of the wife in case she had died unmarried and intestate. It appeared that the wife predeceased her husband, leaving a daughter, who, however, died under the age of twenty-one, without having married. The Master of the Rolls, having held that the daughter was entitled to the exclusion of the wife's brothers and sisters, they presented this appeal.

Cairns and Archibald Smith in support; Lloyd and Hanson contra; Shapter, Karlslake, and Fischer for other parties.

The Lords Justices dismissed the appeal, with costs.

## Master of the Rolls.

Kahn v. Sturgis. July 8, 1856.

## MARRIED WOMAN—PAYMENT OF DIVIDENDS, ALTHOUGH HUSBAND INSOLVENT ON STOCK SETTLED TO SEPARATE USE.

A sum of £1,000 stock in the London and North Western Railway Company had been assigned, upon trust, to pay the dividends to a married woman for life, for her own absolute use and benefit. Her husband afterwards became insolvent: A bill by his assignee in insolvency for payment of the dividends on such stock was dismissed with costs.

It appeared that a sum of £1000 stock in the London and North Western Railway Company had been assigned in trust to pay the dividends thereof to a married woman for life for her own absolute use and benefit, and that, upon her husband having subsequently become insolvent, his assignee filed this bill, claiming payment of the dividends.

Amplett for the plaintiff; Osborne for the provisional assignee; Lloyd and Surrague contra; Hobhouse for the trustees.

The Master of the Rolls dismissed the bill, with costs.

## Vice-Chancellor Kindersley.

Wilton v. Colvin. July 16, 1856.

## MARRIAGE SETTLEMENT—CONSTRUCTION OF COVENANT—FUTURE PROPERTY—POWER OF APPOINTMENT.

A marriage settlement, after reciting that all property to which the wife might eventually become entitled should be settled, contained a covenant by the intended husband that, for the considerations aforesaid and in further pursuance of the said

agreement, all and every the estate and effects of what nature or kind soever, whether real or personal, which the intended wife should become seised, possessed of, or entitled to, should be taken as a distinct estate from him and free from his debts and engagements, and should be conveyed, settled and assured upon the trusts of the settlement. It appeared that the wife at the date of the settlement was entitled to certain property under her father's will, but which was not received by her in consequence of his affairs being entangled, and that she had exercised her power of appointment in respect thereof reserved by the settlement: Held, that as the covenant did not include property to which the wife was entitled in possession, although the recital did, the fact of the deferred payment did not bring it within the scope of the covenant, and that her husband was therefore entitled.

Upon the marriage of Mr. and Mrs. Horne a marriage settlement was executed, whereby it was recited that all the property to which the wife might eventually become entitled in her own right should be settled; and the husband covenanted that, for the considerations aforesaid, and in further pursuance of the said agreement, all and every the estate and effects of what nature or kind soever, whether real or personal, whether the wife should become seised, possessed of, or entitled to, should be taken as a distinct estate from him, and free from his debts and engagements, and should be conveyed, settled, and assured upon the trusts thereinbefore expressed. There was a power of appointment reserved to the wife in the event of there being no issue of the marriage, and which she exercised over certain property to which she was entitled at the date of the settlement under her father's will, but which, by reason of his affairs being entangled, had not been paid.

The question was now raised on this special case whether such property came within the covenant.

Anderson and Collins for the plaintiff; Goldsmid and Cotton for other parties.

The Vice-Chancellor, after referring to Hoare v. Hornby (2 Y. and C. Ch. 121) said that the words in the covenant imported futurity, and did not, therefore, apply to any property to which the wife was entitled in possession, and that the fact of her not having received her share under her father's will, to which she was entitled at the date of the settlement, in consequence of the entanglement of his affairs, did not bring it within the operation of the covenant, and the husband was therefore entitled.

Farrer v. Dain. July 17, 1856.

## CHARITABLE GIFT—DECLARATION—COMMON ADMINISTRATION DECREE—SPECIAL ENQUIRIES.

A testatrix by will, after giving certain legacies and charitable bequests, gave the residue of her personal estate to trustees upon trust (inter alia) to the rector of a parish, to be applied in aid of a fund raised for the endowment of a thank offering church proposed upon the disappearance of the cholera in 1849: In a suit, the Vice-Chancellor refused to make a declaration in respect of this bequest, but made the common administration decree, with special inquiries as to whether the residue consisted of pure personal estate, and also as to the charitable bequests in question.

THE testatrix by her will, dated in May, 1854, after giving certain legacies and charitable bequests, gave all the residue of her personal estate to trustees in trust for certain charitable purposes therein mentioned, and, *inter alia*, one share thereof to the rector for the time being of the parish of St. Mary, Lambeth, to be applied by him in aid of the fund raised for the endowment of the thank-offering church proposed to be erected upon the disappearance of the cholera in 1849. She gave one other share to the same rector to be applied towards the education of the children of the poor inhabitants belonging to the Church of England of the district in which the said church should be situate.

The question was raised in this suit, whether this proposal to build a church had not been abandoned, and a declaration was now sought that the gift had accordingly failed.

*Glasse and De Gez* for the plaintiff; *Baily and Bristow* for the defendant; *Bevir* for the executors.

The Vice-Chancellor said that the declaration could not be made at the present stage of the proceedings, but that the common administration decree would be made, with special inquiries as to whether the residue consisted of pure personalty, and as to the two gifts in question.

*Smedley v. Potter.* July 19, 1856.

PARTITION SUIT—LEGAL ESTATE IN DEVISED SHARE—TRUSTEES AND TENANT FOR LIFE—NEXT OF KIN.

A testator devised an estate to certain persons in twelfth parts, and one of such twelfths was again devised by such devisee in trust for his wife for life, with remainder to his next of kin at her death: Held, in a partition suit, that the trustees of the devisee's will and the tenant for life (who now appeared by counsel and consented to the partition) sufficiently represented such devisee's estate, without having any one to represent his next of kin.

In this partition suit, it appeared that the testator devised an estate in twelfths to certain persons, one of whom, Mr. George Marshall, devised his share to trustees in trust for his wife for life, with remainder to his next of kin on her death. Mrs. Marshall now appeared by counsel, and consented to the partition.

The question arose whether the next of kin of Mr. Marshall were sufficiently represented by the trustees under his will.

*Teed, Baily, Glasse, Busk, Renshaw, C. Chapman Barber, Giffard, Hawkins, W. Morris, and Nalder* for the respective parties.

The Vice-Chancellor said that the legal estate was vested in the trustees of the will of Mr. Marshall, and their appearance, with that of the tenant for life, was sufficient, without having some one to represent the next of kin.

*Knight v. Knight.* July 22, 1856.

TRANSFER OF FUND FROM SUIT IN ONE BRANCH TO SUIT IN ANOTHER BRANCH OF THE COURT—JURISDICTION—INTERIM INJUNCTION.

An order for the transfer of a fund from a suit in the Vice-Chancellor's Court to one in the Rolls' Court must be made to the Lord Chancellor or Lords Justices, intitled in both suits.

Seemle, that where an accounting defendant is entitled to a fund in another suit, in a different branch of the Court, the Lord Chancellor or Lords Justices have jurisdiction to direct a transfer to such other suit.

Until such petition was presented, an injunction was granted to restrain the defendant from dealing with the fund in the meantime.

THIS was a petition for the payment out of court to the sequestrators appointed in a suit at the Rolls of *Brotherton v. Knight*, of a sum to which Hannah Knight, the accounting defendant in such suit, was entitled in the above suit, or for a transfer of the fund from this to the other suit.

*Roberts* in support; *G. W. Collins* contra.

The Vice-Chancellor said that in the case of *Wilson v. Metcalfe*, 1 Beav., 268, Lord Langdale had ordered payment by a stranger, who did not dispute the right of the party to the money. Here this court stood in the place of the stranger, and not only did not dispute the right, but had recognised such right by its order. However, as neither this court nor the Rolls Court had jurisdiction to order the transfer of a fund from one suit to the other, a petition must be presented to the Lord Chancellor or Lords Justices, intitled in both suits for that purpose. An injunction would be granted, restraining Hannah Knight from dealing with the fund in the meantime.

Vice-Chancellor Stuart.

*Gardiner v. Broadbent.* July 17, 1856.

PATENT—INFRINGEMENT—INJUNCTION EX PARTE—AFFIDAVIT.

Where the affidavit in support of a motion for an injunction *ex parte* to restrain the infringement of a patent, merely stated the plaintiff's belief that the patent was still good and valid in all respects, without also stating clearly and distinctly his belief that at the time of the motion for the injunction the invention was new, or had never been practised in this kingdom at the date of the patent;—the injunction was dissolved with costs, upon affidavits in the defendant's behalf that the alleged invention had been made use of for two or three years prior to the date of the patent.

Seemle, that the fact of a patent being recent is no ground for refusing an injunction to restrain its infringement.

THIS was a motion to dissolve an injunction which had been obtained to restrain the infringement by the defendant of a patent purchased by the plaintiff for improvements in cutting the terry or pile of certain textile fabrics used for saddle covers.

The injunction had been obtained *ex parte* upon an affidavit that the plaintiff believed the letters patent were good and valid in all respects.

*Malins* and *R. W. E. Forster* for the defendant, in support, upon affidavits that the alleged invention had been used for two or three years prior to the date of the patent, and on the ground of the insufficiency of the affidavit, citing *Starz v. De la Rue*, 5 Russ. 322.

*Elmsley* and *G. Lake Russell* for the plaintiff *contra*.

The Vice-Chancellor said that the affidavit in support of an application for an injunction should state clearly and distinctly that the applicant believed the invention was new at the time of such application, or that it had never been used in this kingdom at the date of the patent. In the present case the affidavit was insufficient, and the injunction must be dissolved with costs. It was not, however, to be understood that the fact of a patent being recent was any ground for refusing an injunction to restrain its infringement.

# The Legal Observer, AND SOLICITORS' JOURNAL.

SATURDAY, AUGUST 2, 1856.

## RESULTS OF THE SESSION OF PARLIAMENT, 1856.

THE two Houses of Parliament, which were expected to be prorogued on Saturday last, the 26th, assembled on that day, and mutually agreed to various amendments made in several law bills, and adjourned to Tuesday, the 29th July, when the Royal Assent was given by commission to numerous bills for the alteration or amendment of the law, and Parliament was then prorogued nominally till the 7th October.

From the Queen's Speech, which was read by the Lord Chancellor, we extract the following passages, pointing out the four measures of Law Reform which are the most highly prized by her Majesty's ministers as the result of their legislative labours during the last half-year.

"Her Majesty has given her cordial assent to the act for rendering more effectual the *policies in counties and boroughs* in England and Wales. This act will materially add to the security of person and property, and will thus afford increased encouragement to the exertions of honest industry.

"The act for regulating *Joint Stock Companies* will afford additional facilities for the advantageous employment of capital, and will thus tend to promote the development of the resources of the country, while the acts passed relative to the *mercantile laws* of England and of Scotland will diminish the inconvenience which the difference of those laws occasion to her Majesty's subjects engaged in trade.

"Her Majesty has seen with satisfaction that you have given your attention to the arrangements connected with *County Courts*. It is her Majesty's anxious wish that justice should be attainable by all classes of her subjects, with as much speed, and with as little expense, as may be consistent with the due investigation of the merits of causes to be tried."

We proceed now to enumerate the statutes which have passed in this the 19th and 19th & 20th of her Majesty's reign, placing them under the respective heads—1st, of the Law of Property; 2nd, of the Law and Practice of the Superior Courts; 3rd, of Mercantile Law; 4th, of Criminal Law, Police, Public Health, &c.; 5th, Stamps and Taxes; 6th, Marriages and Parochial Law, &c., 7th, Miscellaneous Acts.

### I. THE LAW OF PROPERTY.

Placing this class of acts in the order of  
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their practical importance to the profession they appear to be as follow :—

Leases and Sales of Settled Estates, 29th July.\*

Drafts on Bankers, June 28rd.

Intestates Personal Estates, 29th July.

Advowsons, 14th July.

Episcopal and Capitular Estates, 29th July.

Drainage Advances, 14th March.

Charities, 29th July.

Commons Inclosure, 11th April.

Commons Inclosure (No. 2), 29th July.

West India Loans, 30th June.

Turnpike Trusts Arrangements, 11th April.

Turnpike Trusts Continuance, 14th July.

Insurance on Lives, 30th June.

Incumbered Estates (Ireland), 21st July.

Deeds (Scotland), 29th July.

Here are no less than fifteen acts more or less affecting the Law of Property, but amongst them are few only which particularly concern the legal practitioners in England. They are, 1st, the Leases and Sales of Settled Estates Act, with the section applicable to Hampstead Heath, and substituting the Court of Chancery for the Parliament in a large class of matters relating to private estates. The parliamentary agents will suffer some loss by this beneficial measure, which will operate in favour of the parties interested in settled estates and their solicitors.†

2nd. The Drafts on Bankers' Act is acceptable, in no small degree, to the members of the profession, through whose hands vast sums of money pass in the course of a year, and the power of limiting the payment of cheques to bankers will afford important security in conveying the money to the right hands.

3rd. The Intestates Personal Estates Act, which abolishes the special customs in the cities of London and York and other places, interfering with the general law in the rest of the kingdom, is also a beneficial measure, tending to effect a uniformity in this branch of the law, and somewhat to relieve the legal adviser from responsibility.

### II. COURTS OF LAW AND EQUITY.

County Courts, 29th July.

\* We give the dates of the Royal Assents, and are unable at present to state the chapter of each act, but which will appear hereafter in the general List of Public and General Acts.

† As a considerable number of parliamentary agents are not qualified as attorneys or solicitors, "THE LEGAL OBSERVER AND SOLICITORS' JOURNAL" cannot be expected to deplore this change.



Evidence in Foreign Suits, 29th July.  
Curator Baron of the Court of Exchequer, 29th July.

Court of Exchequer (Scotland), 21st July.  
Small Debts Imprisonment (Scotland), 14th July.  
Judicial Procedure (Scotland), 29th July.  
Bankruptcy (Scotland), 29th July.  
Court of Chancery (Ireland), 29th July.  
Court of Appeal in Chancery (Ireland), 29th July.  
Courts of Common Law (Ireland), 29th July.

Of these ten new statutes, which it will be observed were all passed within the last fortnight of the session, the only one of material importance in this part of the kingdom is the County Court Act, which received the royal assent on Tuesday last. We shall as early as possible lay before our readers the several alterations effected in the jurisdiction and practice of the courts.

It will be observed that four of this class of acts relate to the law and practice in Scotland, and three in Ireland. It may be desirable to notice such parts of those enactments as bear upon professional matters in which English solicitors are occasionally engaged.

### III. MERCANTILE LAW.

Joint Stock Companies, 14th July.  
Mercantile Law Amendment, 29th July.  
Joint Stock Banks, 29th July.  
Mercantile Law (Scotland), 21st July.  
Joint Stock Banks (Scotland), 7th March.

The first two of these acts are of great importance to the public as well as the profession. The Joint Stock Companies Act has for the larger part been submitted to our readers, and will be concluded next week. The limited liability sections appear to comprise very satisfactory regulations and safeguards applicable to that class of partnerships, and if in the practical working of the measure defects should be found, they may be readily supplied. The skill and ingenuity of the lawyer will no doubt be exerted in carrying the provisions of the act into effect, and we doubt not that the anticipations of the government, as declared in the Queen's speech, will be satisfactorily realised.

Our expectations are not so sanguine of the probable success of the partial assimilation of the Mercantile Laws of England and Scotland. Still, such is the skill and ability of our merchants, that they will soon adapt themselves in their dealings and transactions to the altered state of the law—supplying omissions in the new enactments, and removing difficulties in carrying them into effect.

### IV. CRIMINAL LAW, POLICE, PUBLIC HEALTH, &c.

Police, Counties and Boroughs, 21st July.  
Trial of Offences, 11th April.  
Criminal Justices, 29th July.  
Grand Juries, 14th July.  
Metropolitan Police, 28th February.  
Lunatic Asylums, 29th July.  
Public Health, 28th June.  
Smoke Nuisance, 29th July.

Metropolis Local Management, 29th July.  
Pawnbrokers, 28th June.  
Corrupt Practices Prevention, 29th July.  
Annual Indemnity, 29th July.  
Procedure before Justices (Scotland), 14th July.

In this department of the administration of justice, the speech from the Throne places the Counties and Boroughs Police Act in the foreground; and we trust the improvements which will take place under the authority of this statute will prove satisfactory both to the magistracy and the public. Looking over the list of the thirteen acts which appear to belong to this branch of jurisprudence, we may reasonably hope that whilst property will be better protected and offences better restrained, the public health will be promoted, more especially in this vast and increasing metropolis.

### V. STAMPS AND TAXES

Stamp Duties on Articles of Clerkship and Proxies, 29th July.  
Annuities, 7th March.  
Annuities, 5th June.  
Stock in Trade exemption, 7th July.  
Duties on Fire Insurances, 5th June.  
Banker's Compositions, 5th June.  
Income and Land Taxes, 29th July.

The first of these acts relates to the articulated clerks of attorneys, enabling the £80 stamp duty to be paid at any period during the clerkship, subject to a penalty and a charge proportioned to the time when the tax may be paid. We say "tax," although we believe the profession do not wish to see it removed, unless it were applied for purposes of legal education. It is remarkable, however, that attorneys are burthened with a threefold taxation from which other professions are exempt. First, a heavy toll is exacted, in the outset of the young attorney's career (and often diminishing the fee of the skilful practitioner for instruction); at the second step a further stamp of £25 is required; and thirdly, an annual impost of £6 or £9. None of which three taxes are paid by the clerical or medical professions.

The other stamp and tax acts of the late session are above enumerated, though they do not exclusively bear on the legal profession.

### VI. MARRIAGE AND PAROCHIAL LAW, &c., Marriage and Registration Acts Amendment, 29th July.

Marriage Law (Scotland), 29th July.  
Formation of Parishes, 29th July.  
Poor Law (Ireland), 29th July.

On these legislative acts we have at present no material observation to offer. We hope the Dissenters will now be content with the law of marriage, and Lord Brougham is entitled to the thanks of the public for putting an end to Gretna Green Matrimonial Conacts.

The power of amending the limits of parishes

and fixing boundaries, in some degree proportioned to the altered population of various districts, having regard to vested rights and interests, will probably be productive of benefit both to clergy and parishioners.

## VII. MISCELLANEOUS.

We have to add only the following acts which do not appear to belong to any of the preceding classes :

Industrial and Provident Societies, 7th July.

Factories, 30th June.

Obsolete Statutes Repeal, 21st July.

House of Commons Officers, 28th February.

We purpose next week to notice the numerous bills which have been under the consideration of Parliament and afterwards withdrawn, negatived, or postponed.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### JOINT STOCK COMPANIES.

19 & 20 Vict. c. 47.

[Continued from page 228.]

#### *Deeds.*

42. Any company registered under this act may, by instrument or writing under their common seal, empower any person, either generally or in respect of any specified matters, as their attorney, to execute deeds on their behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company to the same extent as if it were under the common seal of the company.

43. A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any company registered under this act, if made, accepted, or endorsed in the name of the company by any person acting under the express or implied authority of the company.

44. In any mortgage made according to English law by any company registered under this act there shall be implied the following covenants (unless words expressly negativing such implication are contained therein); that is to say, a covenant on the part of the company to pay the money thereby secured, and interest thereon, at the time and rate therein mentioned; a covenant that they have power to convey or assure the property declared to be conveyed or assured to the mortgagee free from incumbrances; and a covenant for further assurance of such property, at the expense of the company, to the mortgagee or any person claiming through, under, or in trust for him; and if a power of sale is thereby given such power shall imply an authority to sell by public auction or private contract, altogether or in parcels, and to make, rescind, or vary contracts for sale or resale without being liable for loss, and also an authority to give effectual receipts for purchase moneys, and such mortgage may be in the form marked H in the schedule hereto, or as near thereto as circumstances admit.

45. In any bond and disposition in security made according to Scotch law by any company registered under this act there shall be implied the following obligations and undertakings (unless words expressly

negativing such implication are contained therein); that is to say, an obligation on the part of the company to pay the money thereby secured, and interest thereon, at the time and rate therein mentioned; an undertaking that they have power to convey the property declared to be conveyed to the heritable creditor free from incumbrances: and an obligation to make and execute, at the expense of the company, in favour of the heritable creditor, or any person claiming through, under, or in trust for him, any further deed necessary to give effect and validity to the security; and if a power of sale is thereby given, such power shall imply an authority to sell by public auction or private contract, altogether or in parcels. and to make, rescind, or vary contracts of sale or resale, without being liable for loss, and also an authority to give effectual receipts for purchase moneys; and such bond and disposition in security may be in the form marked I in the schedule hereto, or as near thereto as circumstances admit, and shall be registered in the general or particular or burgh register of sasines, as the case may be, and being so registered shall be equivalent to a bond and disposition in security in ordinary form, containing power of sale, with sasine thereon, duly recorded in the register of sasines.

46. In any conveyance or assurance made according to English law by any company registered under this act there shall be implied (unless words expressly negativing such implication are contained therein) the following covenants on the part of the company: (that is to say)

A covenant that, notwithstanding any act or default done by the company, they were at the time of the execution of such conveyance or assurance seised or possessed of the lands or premises thereby conveyed or assured for an indefeasible estate of inheritance in fee simple, free from incumbrances occasioned by them, or otherwise for such estate or interest as therein expressed to be assured, free from incumbrances occasioned by them;

A covenant that the person to whom such lands or premises are conveyed or assured, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the company and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the company and their successors from all incumbrances occasioned by the company;

A covenant for further assurance of such lands or premises at the expense of the person to whom the same are conveyed or assured, his heirs, successors, executors, administrators, or assigns (as the case may be), by the company or their successors, and all other persons claiming under them.

47. In any disposition of heritable property granted according to Scotch law by any company registered under this act there shall be implied, unless words expressly excluding such implication are contained therein, an obligation of absolute warrandice, and an obligation to complete the company's title at its own expense so far as necessary to validate or give full effect to such disposition, and an obligation to grant also at its own expense any further deeds which may be necessary to render such disposition effectual.

#### *Examination of Affairs of Company.*

48. Upon the application of one fifth in number and value of the shareholders of any company regis-

tered under this act, the Board of Trade may appoint one or more competent inspectors to examine into the affairs of the company, and to report thereon in such manner as the Board of Trade directs.

49. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power: any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any such book or document, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

50. Upon the conclusion of the examination the inspectors shall report their opinion to the Board of Trade: such report shall be written or printed, as the Board of Trade directs: a copy shall be forwarded by the Board of Trade to the registered office of the company, and a further copy shall, at the request of the shareholders upon whose application the inspection was made, be delivered to them or to any one or more of them: all expenses of and incidental to any such examination as aforesaid shall be defrayed by the shareholders upon whose application the inspectors were appointed.

51. Any company registered under this act may in general meeting appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this exception, that, instead of making their report to the Board of Trade, they shall make the same in such manner and to such persons as the company in general meeting directs, and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Board of Trade.

52. A copy of the report of any inspectors appointed under this act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible as evidence in any legal proceeding.

#### Notices.

53. Any summons or notice requiring to be served upon the company may, except in cases where a particular mode of service is directed, be served by leaving the same, or sending it through the post addressed to the company, at their registered office, or by giving it to any director, secretary, or other principal officer of the company.

54. Notices by letter shall be posted in such time as to admit of the letter being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was put into the post office at such time as aforesaid.

55. Any summons, notice, writ, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

#### Legal Proceedings.

56. All offences under this act made punishable by

any penalty may be prosecuted summarily before two or more justices, as to England in manner directed by an act passed in the session holden in the eleventh and twelfth years of the reign of her majesty Queen Victoria, chapter forty-three intitled An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders; and as to Scotland, before two or more justices or the sheriff of the county, in the manner directed by the act passed in the session of Parliament holden in the seventeenth and eighteenth years of the reign of Her Majesty Queen Victoria, chapter one hundred and four intitled An Act to amend and consolidate the Acts relating to Merchant Shipping, as regards offences in Scotland against that act, not being offences by that act described as felonies or misdemeanours; and as to Ireland, in the manner directed by the act passed in the session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intitled An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions in Ireland, or any act passed for the amendment of the above-mentioned acts.

57. The justices or sheriff imposing any penalty under this act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and subject to such direction, all penalties shall be paid into the receipt of Her Majesty's Exchequer, in such manner as the treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom.

#### Alteration of Forms.

58. The Board of Trade may from time to time make such alterations in the forms and tables contained in the schedule hereto as they deem requisite: they shall publish any form or table when altered in the *London Gazette*, and upon such publication being made, it shall have the same force as if it were included in the schedule to this act.

### PART III.—WINDING-UP

#### Preliminary.

59. The provisions of this act relating to the winding-up of companies shall apply to all companies registered under this act, and to all companies registered under the act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, and intitled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies from and after the date at which they have obtained registration under this act in manner herein-after mentioned, but not any other companies.

60. The expression "the court," as used in the Third Part of this act, shall mean the following authorities: (that is to say)

In the case of a company engaged in working any mine within and subject to the jurisdiction of the Stannaries,—The court of the Vice-Warden of the Stannaries;

In the case of a limited company registered in England that is not engaged in working any such mine as aforesaid, the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate;

In the case of a limited company registered in Ireland, whose registered nominal capital does not exceed five thousand pounds,—the commissioners of bankrupt in Ireland;

In all cases not herein-before provided for the court shall mean as respects companies registered in England the High Court of Chancery of England, as respects companies registered in Scotland the court of session in either division thereof, and as respects companies registered in Ireland the Court of Chancery of Ireland.

And any Court to which jurisdiction is given by the third part of this act, not being the Court of Chancery or the Court of Session, shall in addition to its ordinary powers, have the same power of enforcing any orders made by it in pursuance of this act, if in England, as the Court of Chancery has, if in Ireland, as the Court of Chancery in Ireland has, in relation to matters within the jurisdiction of such courts respectively.

61. In the event of any company being wound up by the court or voluntarily, the existing shareholders shall be liable to contribute to the assets of the company to an amount sufficient to pay the debts of the company, and the costs, charges, and expenses of winding up the same, with this qualification, that if the company is limited no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him.

62. In the event of any company other than a limited company being wound-up by the court or voluntarily, any person who has ceased to be a shareholder within the period of three years prior to the commencement of the winding-up shall be deemed for the purposes of contribution towards payment of the debts of the company, and the costs, charges, and expenses of winding-up the same, to be an existing shareholder, and shall have in all respects the same rights, and be subject to the same liabilities to creditors, as if he had not so ceased to be a shareholder, with this exception that he shall not be liable in respect of any debt of the company contracted after the time at which he ceased to be a shareholder.

63. In the event of any limited company being wound up by the court or voluntarily, any person who has ceased to be a holder of any share or shares within the period of one year prior to the commencement of the winding-up shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs, charges, and expenses of winding up the same, to be an existing holder of such share or shares, and shall have in all respects the same rights and be subject to the same liabilities to creditors as if he had not so ceased to be a shareholder.

64. The winding up shall, if the company is wound up by the court, be deemed to commence at the time of the presentation of such petition as is hereinafter required to be presented to the court, and if the company is wound up voluntarily, be deemed to commence at the time of the passing of the resolution authorising such winding up.

65. Any existing or former shareholder upon whom calls are authorised to be made by the Third Part of this act is hereinafter called "a contributory," and the representatives of any deceased contributory shall be liable in a due course of administration to the same extent as such contributory would be liable under the Third Part of this act, if alive.

66. For the purpose of ascertaining the liability of

existing and former shareholders as between themselves, the following rule shall be adopted: (that is to say)

- i. In the case of a company other than a limited company every transferee of shares shall, in a degree proportioned to the shares transferred, indemnify the transferor against all existing and future debts of the company;
- ii. In the case of a limited company every transferee shall indemnify the transferor against all calls made or accrued due on the shares transferred subsequently to the transfer.

*Winding up by Court.*

67. A company may be wound up by the court under the following circumstances (that is to say)

- i. Whenever the company in general meeting has passed a special resolution requiring the company to be wound up by the court;
- ii. Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year;
- iii. Whenever the shareholders are reduced in number to less than seven;
- iv. Whenever the company is unable to pay its debts;
- v. Whenever three-fourths of the capital of the company have been lost or become unavailable.

68. A company shall be deemed to be unable to pay its debts,

- i. Whenever a creditor to whom the company is indebted in a sum exceeding fifty pounds then due has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company have for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;
- ii. Whenever, in England and Ireland, execution issued on a judgment, decree, or order obtained in any court in favour of any creditor in any suit or other legal proceeding instituted by such creditor against the company is returned unsatisfied, in whole or in part, by the sheriff of the county in which the registered office of the company is situate;
- iii. Whenever, in Scotland, the inducements of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made.

69. Any application for the winding-up of a company shall be by petition, and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the same: such petition may, in cases where the company is unable to pay its debts, be presented either by a creditor or a contributory, but where any other ground is alleged for winding up the company a contributory alone is entitled to present the petition.

70. Upon the hearing of any petition presented by a creditor, the court may dismiss such petition, with or without costs, to be paid by the petitioner, or it may make an order or pronounce an interlocutor directing the company, by a day to be named in the order or interlocutor, to pay or secure payment to the creditor of all moneys that may be proved due to him, together with such costs as the court may

direct; or the court may, if it so thinks fit, on the hearing of such petition, make an order or decree for winding up the company in the first instance, or such other order as it deems just.

71. If at the expiration of the time named in such order or interlocutor such payment is not made, or security given, the court may thereupon make an order or decree for winding up the company.

72. Upon the hearing of a petition presented by a contributory, the court may dismiss such petition, with or without costs, to be paid by the petitioner, or it may make an order or decree directing the company to be wound up, or such other order or decree as it deems just.

73. After the date of such order or decree for winding up the company, all suits and actions against the company shall, if the court so orders, be stayed. No director or other officer of the company shall, without the sanction of the court, dispose of any of the property, effects, or things in action of the company, and no transfer of any shares shall be valid without the sanction of the court: a copy of such order or decree shall forthwith be reported by the company to the registrar of joint stock companies, who shall make a minute thereof in his books relating to the company.

74. In cases where the Court of Chancery in England or Ireland makes an order for winding up a company, it may, if it thinks fit, direct all or any subsequent proceedings for winding up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate, or if the company is formed for the purpose of working any such mine as is within and subject to the jurisdiction of the Stannaries, in the Court of the Vice-Warden of the Stannaries; and upon such order being made the court therein named shall have the same jurisdiction and exercise the same powers with respect to winding up such company as it would have and exercise in a case by this act declared to be within its jurisdiction.

75. As soon as may be after making an order or decree for winding up the company the court shall cause the assets of the company to be collected, and applied in discharge of its liabilities in a due course of administration.

76. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of any creditor of such trader, shall, if made or done by or against any company registered under this act, be deemed, in the event of an order being made for winding up such company, to have been made or done by way of undue or fraudulent preference of such creditor of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall be deemed to correspond with the filing of a petition for adjudication of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company registered under this act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

77. The court may, after it has made an order or decree for winding up the company, summon before it any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of

giving information concerning the trade, dealings, estate, or effects of the company; and the court may require any such person to produce any books, papers, deeds, writings, or other documents in his custody or power which may appear to the court requisite to the full disclosure of any of the matters which the court thinks necessary to be inquired into for the purpose of winding up the company; and if any person so summoned refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may by warrant authorise and direct the persons therein named for that purpose to apprehend such person, and bring him before the court for examination.

78. The court may examine upon oath, either by word of mouth or upon written interrogatories any person appearing or brought before them in manner aforesaid, concerning the trade, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to sign and subscribe the same.

79. If any director, officer, or contributory of any company for the winding up of which an order or decree has been made under this act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud the creditors or contributories of such company or any of them, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

80. If any attachment, sequestration, or execution is issued against any company, by virtue whereof the estate and effects of the company, or any of them, may be attached, sequestered, or taken in execution, at any time within three months next before the filing or presentation of the petition for winding up the company, such attachment, sequestration, or taking in execution shall be void in favour of the liquidators of the company, as against the attaching, sequestrating, or execution creditor, whether the same has been completely executed or not, except that such creditor shall, if the attachment, sequestration, or execution would have been valid but for this provision, be entitled to retain out of any money already realised his costs of suit, and of the attachment, sequestration, or execution, or to proceed with the attachment, sequestration, or execution for the purpose of realising such costs; but on satisfaction of such costs, or on tender of the amount thereof by the liquidators to the creditor, it shall be lawful for the liquidators to recover from such creditor the property so attached, sequestered, and taken in execution, and the proceeds of such property, or the residue thereof, as the case may be.

81. All books, accounts, and documents of the company, and of the liquidators hereinafter mentioned, shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters therein contained, and purporting to be therein recorded.

82. The court may, at any time after making an order or decree for winding up a company, and before it has ascertained the sufficiency of the assets of the company, or the debts in respect of which the several classes of contributories are liable, make calls on all or any of the contributories, to the extent of their liability, for payment of all or any sums it deems

necessary to satisfy the debts of the company and the costs of winding it up, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

83. All monies received under the direction of the court on account of the sale or conversion of any of the assets of the company, or in respect of calls made on any contributory, or of any other matter, with the exception of such balance, if any, as the official liquidators may, with the sanction of the court, retain in their hands for the payment of current expenses, shall in England be paid into the Bank of England or some branch thereof, and in Ireland into the Bank of Ireland or some branch thereof, and in Scotland into one of the incorporated or chartered banks in Scotland, to the credit of such account as the court may direct; and no money standing to such account shall be paid out by the bank except upon cheques signed in such manner as the court directs.

84. The court may, at any time after the presentation of a petition for winding up a company, and either before or after making an order for winding up the same, upon the application by motion of any creditor or contributory of such company, restrain further proceedings in any action or suit against the company, or appoint a receiver of the estate and effects of the company; it may also, by notice or advertisement, require all creditors to present and prove their claims within a certain time, or be precluded from the benefit of any distribution which may be made before such claim is proved.

85. The court may, at any time after an order or decree has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time on such terms and subject to such conditions as it deems fit.

86. As soon as the creditors are satisfied, the court shall proceed to adjust the rights of the contributories amongst themselves; and to distribute any surplus that may remain amongst the parties entitled thereto, and for the purposes of such adjustment it may make calls on the contributories to the extent of their liability for payment of such sums as it deems necessary; and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

87. The court may make such order as to the priority and payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company as it thinks just.

[To be concluded in the next No.]

## CONSOLIDATION OF THE STATUTE LAW.

### THE LORD CHANCELLOR'S SPEECH.

The Lord Chancellor, on the 21st July, in calling the attention of the House to the second report of the Commissioners for Consolidating the Statute Law, said that towards the end of the session of 1854 her Majesty issued a royal commission, consisting of a number of distinguished lawyers, authorising them to consolidate the statute law as far as feasible; and

power was given them, if they should think fit, to introduce into this consolidation any portion of the common law. There were further instructions given to the commissioners to make suggestions for the improvement of future legislation. He need hardly say that it was a task of almost overwhelming labour. The statutes of the realm were contained in forty-four folio volumes, printed in very small type, and amounted in number to 15,000. The commission comprised, among others, his noble and learned friend Lord Lyndhurst, the Lord Chief Justice of the Queen's Bench, the Chief Justice of Common Pleas, Lord Wensleydale, and Vice-Chancellor Sir W. P. Wood, all of whom took a deep interest in the matter. The first inquiry was as to the mode of procedure. It was suggested that there should be a general sketch of the whole of the statutes under different heads and subjects, and that they should be thus consolidated. That plan was to a certain extent adopted, but it was soon discovered that such a plan was not only imperfect, but also impracticable.

It might be easy to arrange under certain heads the whole of the law, but the statutes of the realm did not constitute the whole of the law, because there was the common law or unwritten law to be considered also. Instructions were also given to the commissioners to improve and simplify the language in which the statutes were worded, and to suggest amendments, and to introduce such portions of the common law as they should think desirable. In that spirit the work was begun, but it was soon found that any attempt to improve the language of the statutes, or to make the consolidation of the statutes embrace any portion of the common law, resulted in such extreme difficulties, that the work of consolidation could not be completed in half a century. Therefore, after a great deal of consideration, the course adopted was to make a very general and rude classification, and then to proceed to consolidate under different heads and different statutes. They divided the subjects chiefly into *criminal law*, *real property law*, and *mercantile law*.

The commissioners made their report toward the end of last session, wherein they stated—not what they had done, for the work was so difficult that not much had been done beyond experiments—they found, at an early period of their work, that unless an improved method of continuing legislation was adopted, their work would be of little avail. The report of the commission accordingly contained the following recommendation: "We therefore beg leave to submit to your Majesty that, in our opinion, the most effectual method for ensuring simplicity and uniformity in, or otherwise improving the form and style of future statutes, would be the appointment of an officer or board, with a sufficient staff of assistants, whose duty it should be to advise on the legal effect of every bill which either House of Parliament should think fit to refer to them; and, in particular, on the existing state of the law affected by the proposed bill, its language and structure, and its operation on the existing law; and, also, to point out what statutes it repeals, alters, or modifies, and whether any statutes, or clauses of statutes, on the same subject-matter are left unrepealed, or conflicting; so that the house may have at its command the materials which will enable it to deal properly with the bill."

What the commissioners suggested was, that there should be an officer that should perform, in regard to public bills, duties in a great measure

analogous to those performed by her Majesty's Council with regard to private bills. It was proposed that this functionary should be appointed by both Houses of Parliament, and that he should have a competent staff of persons to assist him. It would not be the duty of this officer to interfere with the policy of the bills; that office would, of course, rest with the legislature. It frequently happened that there being no person whose duty it was to examine bills to see how far they clashed with the existing law and current legislation, no session passed without a great number of blunders being committed. That happened in a variety of ways. If a bill were framed with the greatest care, a noble lord or hon. member might spoil it by the introduction of an amendment which he might think an improvement, and to which the promoters of the bill might not at once see any objection, or they might be so anxious to pass the bill, and so opposed to delay, that an amendment might be admitted which would be at variance with the existing law.

That being the case, he (the Lord Chancellor) apprehended that the appointment of such a functionary would be of essential service. It was quite clear that the labours of such a person would have a most material effect in stopping at least some of the grosser evils at present complained of. There was another most important function which he thought such an officer might very usefully discharge. The statute book contained about 15,000 statutes, and an immense majority of these consisted of matters relating to the mere administration of finance, matters relating to the army, or of a merely temporary and local nature, and not affecting the general law of the country. The Appropriation Act and the Indemnity Act, for example, were only passed for a year, and when they had done their duty they had no business in the statute book. Such acts as did not relate to the general law of the country or rules of conduct ought to have no place in the statute book.

At the commencement of the year his valued and learned friend Mr. Coulson reported to the commissioners that he had analysed the acts of the last year, and he had found that they were 140 in number, of which 68 hardly deserved to be called laws, as they were for some temporary or occasional purpose which terminated with the year; and which, in fact, laid down no permanent rule of law. The whole of the acts of last session filled 1,005 pages, and 642 of these were occupied by mere temporary acts.

A classification had already been made of public and private bills, but that classification had not been carried far enough. It was the intention of the Government, at the opening of the next session of Parliament, to take such steps as might be necessary for the establishment of such an officer as he had described. He thought the result of such a system would be that our statutes would be shortened and improved, and the grosser blunders to which we were now liable would be avoided. He would conclude by stating what had already been done. A great number of bills had been prepared and were in a state in which they might be laid on the table, but had been delayed because he (the Lord Chancellor) had not sufficient time to look over them.

One of these was a bill for consolidating the whole of the laws relating to *stamps*. That bill was prepared by a very able man, and was placed before the Board of Stamps for their consideration, after which it would be laid on the table of the house.

Then, again, there was the *criminal law*, which was a definite subject, and comparatively easy to be dealt with, because it was confined within narrower limits than other departments of jurisprudence. Lord Wenaleydale and the Chief Justice of the Common Pleas, in concurrence with Sir F. Kelly and Mr. Greaves, had undertaken to inquire into this branch of the subject. Sir F. Kelly, notwithstanding his extensive practice, had for several months devoted himself to the arduous duty of consolidating all the simple statutes on this subject. There were some enactments which contained what was called the criminal and civil department, which, to avoid embarrassment, it was thought proper to separate.

There were a great number of old statutes relating to *religion* which the commissioners thought it would be better to ask Parliament to repeal at once, because they referred to habits of bygone days; and to consolidate those laws would be not only difficult but in some cases would excite a smile. That matter, therefore, stood over; but with that exception, and some others, the Statute Law Commissioners had embodied all the laws relating to *private offences*, high *treason*, offences against *public justice*, offences against the *person*, offences of *larceny* and *theft*, *malicious injury* of property, and *forgery*. Under these heads all the criminal statutes were now embodied in six bills, which would be laid on their lordships' table. Besides these they had embodied all enactments relating to criminal proceedings, indictments, &c. He need hardly say that those learned persons had ably achieved the task committed to them.

One circumstance that struck the commissioners in the course of their labours was, that unless ordinary bills were carefully examined consolidation would become impossible. It was also considered important that the language of the law should be preserved as much as possible. Having examined 40 volumes, containing 15,000 statutes, the commissioners had arrived at the conclusion that the whole of the statute law might be brought within 800, others, more sanguine, thought that the statutes might be reduced to 250. Sir F. Kelly thought this great work might be accomplished in about two years, and that the whole of the statute law might be brought within three or four moderately-sized volumes. He (the Lord Chancellor) thought this would be a great and valuable improvement, and concluded by laying on the table one of the bills for the consolidation of the statute law, which was read a first time *pro forma*.

## COUNTY COURTS.

### ANNUAL PARLIAMENTARY RETURN.

The annual return ordered by the House of Commons on the 18th July has just been printed, comprising the number of plaints entered, causes tried, appeals from decisions, sittings of courts, and monies received and paid from the 1st January to 31st December, 1855.

The following is a summary of the principal parts of this elaborate return, with some observations, which we submit to our readers:—

#### Total number of plaints entered

In 1847 . . . . .	429,315
“ 1848 . . . . .	427,611

" 1849 . . . . .	896,191
" 1850 . . . . .	896,798
" 1851 . . . . .	441,584
" 1852 . . . . .	474,149
" 1853 . . . . .	484,966
" 1854 . . . . .	526,718
" 1855 . . . . .	588,168

It will thus be seen that after the first two years, the number of plaints declined in the next two, to the extent of 30,000 in each year. In the 5th year it exceeded the 1st by 12,000, and from that time has gone on increasing. In the 6th year by 13,000; in the 7th year 10,000; in the 8th year 42,000; and last year 12,000. Thus the increase in 9 years has been 109,000; but the number of causes tried, or judgments entered, do not show anything like a proportionate increase.

*Total number of causes tried, or in which judgment was entered.*

In 1847 . . . . .	267,445
" 1848 . . . . .	259,118
" 1849 . . . . .	226,403
" 1850 . . . . .	217,178
" 1851 . . . . .	283,646
" 1852 . . . . .	246,138
" 1853 . . . . .	254,734
" 1854 . . . . .	282,224
" 1855 . . . . .	285,171

Here it appears that the number in the first year was greater than in the six subsequent years, and in the eighth year the increase was only 15,000, and in last year about 3,000 more.

We come next to the causes tried for *sums above* £20 and *not exceeding* £50, or in which judgment has been obtained. The difference in this class of cases is rather striking.

In 1850 . . . . .	2,436
" 1851 . . . . .	8,286
" 1852 . . . . .	7,020
" 1853 . . . . .	5,276
" 1854 . . . . .	5,300
" 1855 . . . . .	4,686

It will be seen that in these trials, or generally, we believe, "*judgments by default*," there has been a rapid decline from 8,286 to 4,686. How can it be said, therefore, that these courts are increasing in popularity? In cases where the plaintiffs are compelled to resort to the county court, the number is somewhat increasing, but not more than in proportion to the increase in wealth and population. The increase in nine years of compulsory plaints is at the rate of about twelve per cent.—no vast proportion; whilst in the cases where there is concurrent jurisdiction in the superior courts, the number has declined in the last four years upwards of forty per cent.

Let us next look at the amounts of *money* for which judgments were obtained.

In 1847 . . . . .	£755,392
" 1848 . . . . .	752,548
" 1849 . . . . .	628,402
" 1850 . . . . .	647,586
" 1851 . . . . .	815,514
" 1852 . . . . .	797,997

" 1853 . . . . .	707,551
" 1854 . . . . .	764,169
" 1855 . . . . .	786,077

So that in this department of the amount of judgments obtained, there is £19,315 less in the last year 1855, than in the first year 1847! The total for which these judgments were obtained in 9 years amounted to £6,605,231—but the plaints were issued for nearly double that sum, viz., £12,807,908.

Then the amount paid into court in satisfaction of debts owed for, without proceeding to judgment, was £882,285.

Come we next to the "costs, charges, and expenses" of the proceedings in the county courts.

The *Judges'* fund varies in different years from £73,000 to £87,000, making a total in 9 years of £730,301.

The *Clerks'* fees have also varied from £73,000 to £87,000, producing a total in 9 years of £727,405.

The *Bailiffs'* fees in the lowest year were £46,000, and in the highest £68,000, making in all £514,112.

The "grand" total of these three classes of fees produced £1,971,818—say little short of two millions in nine years to recover the various small debts above mentioned! But this is not all, for there is a sum to be super-added in the same period of £394,256 for the "general fund."

This latter sum, we believe, comprises the building and other expenses of the several court houses, averaging about £43,000 a year.

The number of *Appeals*, under the 13 & 14 Vict. c. 61, from 1850 has been in six years 142, of which 43 were confirmed, 43 reversed, and 55 dropped.

The number of plaints entered and causes tried by *consent* since 1850, has been 174, or 29 per annum, being less than half a cause for each court throughout the year.

## PUNISHMENT BY TRANSPORTATION.

### REPORT OF SELECT COMMITTEE

Appointed to inquire into the provisions and operation of the act 16 & 17 Vic. c. 99, intituled "An Act to substitute, in certain cases, other Punishments in lieu of Transportation," and to report thereon to the House.

Ordered to report—

That the committee have met and considered the subject-matter to them referred, and have examined several witnesses in relation thereto, and have agreed to the following resolutions, viz.,

1. That in the opinion of the committee a continuance of the system of transportation to some colony or colonies, with such improvements as experience has suggested or may suggest, would be highly desirable, provided that the system can be carried on with advantage to the colony, and with satisfaction to the colonists.

2. That the peculiar advantage of transportation lies not so much in the mere fact of carrying into effect in a distant country sentences of imprisonment and penal labour—establishments at home, under the public eye, having, for such purposes only, some considerable advantages, but in the power of employing convicts under more or less of restraint in a



community where their labour may be peculiarly valuable, and in which the demand for it is such as to give facility for their finding ready employment subsequently as free labourers, and ultimately for advantageous settlement.

8. That to make a colony a fitting place for the reception of convicts it is necessary that there should be within it some considerable demand for their labour, either for public improvements or by private capital; and that there should be already within it, or be likely to arise, such an amount of free population as will prevent a great inequality in the sexes, and too great a disproportion of the convict element.

4. That, according to the evidence laid before the committee, it would not be desirable to send convicted prisoners either to Moreton Bay, or to the Red River, or to the Falkland Islands.

5. That in regard to Vancouver's Island, the evidence is not sufficiently ample to warrant a present decision. The distance and consequent expence present, no doubt, a strong objection, and there may be difficulties arising from the presence of a considerable population of Indians; but the position is one of commercial and political importance: the soil and climate are good, and the settlement might, in spite of some obstacles, be made inviting to free settlers. On the whole, therefore, the point may be deemed well worthy of further consideration and inquiry on the part of her Majesty's Government.

6. That in the event of a new settlement for the reception of convicts being found, the committee would desire to call the attention of the Government (in conformity with the general direction indicated by Lord Stanley and Mr. Gladstone, as successive Secretaries of State), to the northern portion of Australia; and more especially under the present altered circumstances of that country, to the head of the Gulf of Carpentaria and the adjacent islands. The climate, in spite of the latitude, appears not ill adapted to European constitutions; the soil is fertile, and while it is not so near the peopled settlements of New South Wales as to give cause of alarm, or awaken jealousy on their part, it is yet sufficiently within reach to hold out the expectation that free settlers might, ere long, follow in the wake of such an establishment, and supply the means of profitable employment to the convicts.

7. That, however, in the opinion of the committee, among existing colonies, that of Western Australia seems to offer the only field for the continuance of the system of transportation.

8. That in the colony of Western Australia the system of transportation appears to have been carried on with advantage to the colony, with satisfaction to the colonists, and with undoubted benefit to the convicts themselves, until within the last few months, when a change has been made in the selection of the convicts sent from home—the act of 16 & 17 Vic. c. 99, having now come into full operation, and being supposed, according to the evidence of Colonel Jebb, to render compulsory the transportation of all prisoners condemned to the longer periods of punishment, and found to be of sufficiently strong health. Thus the power of selection which previously existed has practically ceased. Thus the worst and most flagitious class of offenders (some of them, indeed, utterly unfitted for transportation under any system) is now sent out instead of a less depraved one, as before.

9. That in the opinion of the committee it is essential to revert without delay to the previous practice of selection in this respect.

10. That the continued influx of convicted prisoners into a colony of so limited a population as Western Australia will, however, present many practical difficulties, which will require the vigilant attention of her Majesty's Government. Under such circumstances, any measures that can give increased attraction to free settlers, or invite capital and labour to the colony, would be most desirable; and among others there is one which, according to the evidence laid before the committee, may deserve to be specially mentioned. While maintaining, if it be thought desirable on other grounds, the present upset price of land in the other Australian colonies, and without questioning its merits or advantages elsewhere, the committee would recommend to the consideration of the Government the expediency of making a large reduction in that price within this colony, and, indeed, within any colony in which convicts from England are received.

11. That complaint also has been made to the committee that the provision by which the convict is called upon to repay the expence which has been incurred in carrying him out to Australia, and in certain cases, of paying a large proportion of the expence of sending out his family, has the effect of unduly raising the price of labour to the colonist, and of throwing obstacles in the way of bringing out their families—an object of the highest importance to the good order and morals of the colony. The committee would, therefore, recommend an early reconsideration of these provisions.

12. That it is desirable to review and to revise the provisions of the act 16 & 17 Vic. c. 99, by which the terms of transportation as previously existing were commuted for shorter terms of penal servitude in England. It may be questioned whether the abridgment of the penal sentences, on condition of their being passed at home, is founded on just principles; and it is certain that this change has placed a new and unnecessary difficulty in the way of well-regulated transportation.

And the committee have directed the minutes of evidence taken before them, together with an appendix thereto, to be laid before your Lordships.

10 July, 1856.

## LAW OF ATTORNEYS AND SOLICITORS.

### LIEN OF SOLICITOR ON TITLE DEEDS FOR COSTS

Mr. Gray was the law agent of the late Mr. Cunningham, of Renfrewshire, and brought an action before the sheriff of Lanarkshire to recover payment of his bill of costs from November 28, 1826, to December, 28, 1834, amounting to £609 12s. 7d. Mr. Cunningham was personally served with the summons, but did not appear, and on July 1, 1835, the sheriff made a decree in absence for the whole demand, with interest. Mr. Gray, on June 8, 1836, raised a summons of adjudication on this decree, seeking to affect Mr. Cunningham's estates of Stonelaw and Kinninghouse, and some property in Regent-street, Glasgow. It appeared Mr. Cunningham had paid £1,350 for the Kinninghouse property, and £2,140 for the Regent-street property, but he had become the owner of both before Mr. Gray became his agent.

In January, 1830, Mr. Cunningham purchased the Stonelaw property for £18,500, subject to a heritable bond for £15,000, dated in 1824, in favour of the Bank of Scotland, and subject also to some other real burthens. The title-deeds of Stonelaw were in

the hands of the bank, by assignment under the heritable bond, but on the completion of the purchase they were delivered up to Mr. Cunningham.

Mr. Gray, as his law agent, had in his hands the title-deeds of the three estates, and the Bank of Scotland being desirous of selling the Stonelaw property, in order to obtain their money, applied to him for the deeds. A lengthy correspondence took place in respect of Mr. Gray's lien on such deeds, during the years 1832—4; but eventually, in December, 1836, after Mr. Gray had raised his summons of adjudication, and before the decree thereon, an agreement was entered into between him and the bank that they should pay him £425 towards the demand of £612 12s. 7d., which he had against his client, and that he should abandon his claim of lien on the Stonelaw deeds, so that that estate might be sold to satisfy the claim of the bank.

This agreement was carried into effect with Mr. Cunningham's approbation, and the £425 was paid to Mr. Gray, whereby his claim was reduced to about £380, including interest.

On February 14, 1837, Mr. Gray obtained a decree whereby the Lord Ordinary assold the Stonelaw estate, and adjudged the two other properties to him in satisfaction of the balance due, and he was duly in feoffment in those lands. Mr. Cunningham approved of these proceedings, and died in 1840.

Mr. Gray afterwards raised a process of ranking and sale, claiming to be ranked *primo loco* for the £380 and interest, and also for a further sum of £155 for subsequent expenses, consisting chiefly, if not entirely, of the expenses incurred by him in the proceeding relative to his claim against Mr. Cunningham. This claim was opposed by the respondents, relying on an heritable bond for £2,500 over the properties of Kinning-house and Regent-street, granted in 1823 by Mr. Cunningham. The other respondent objected to the claim in virtue of an heritable bond from Mr. Cunningham in 1830, and in the preparation of which Mr. Gray acted as her agent and also of Mr. Cunningham, and she alleged that during the negotiations Mr. Gray never set up any claim of hypothec, but on the contrary represented the estates as subject to no transactions except the prior bond.

The Court of Session had affirmed the decision of the Lord Ordinary adverse to Mr. Gray, holding, 1st, that his right of hypothec or retention did not extend to the £155; 2nd, that notwithstanding the sheriff's decree and the subsequent decree of adjudication, his bills were still liable to taxation; 3rd, that he could only claim a lien upon the estates of Kinning-house and Regent-street, for such proportion of his demand as would attach thereto after distributing a rateable proportion of the claim to the Stonelaw estate; and 4th, that as against Miss Cunningham he could not set up any right of hypothec at all.

Mr. Gray appealed from these interlocutors to the House of Lords. The Lord Chancellor (Lord Cranworth) said—

"My lords, as to the point with reference to the £155, the Lord Ordinary decided, and his decision was adopted by the Court of Session, in these terms: 'finds, that the objection to Gray's claim of hypothec in so far as founded on the accounts, amounting to £155 14s. 8d., incurred subsequent to the 17th of April, 1835, before which date the relation of agent and client between these parties had been dissolved, cannot be maintained in competition with the claims of the respondents' heritable creditors, so as to enable

Gray to draw preferably, and to the prejudice of the said respondents.

"I confess that on this part of the case I have very considerable doubts, because if a solicitor has a lien upon his client's deeds for costs incurred by him, and the client upon application refuses to pay those costs, and the solicitor is consequently driven to bring an action, undoubtedly the law of England, according to all principle, though there is no direct authority upon the subject, except a case very shortly reported in *Barnwell and Cresswell* (vol. 2, p. 116), the lien must extend as well to the costs of enforcing the bill of costs as to costs incurred by the client himself.

"The Court of Session have held that as to this £155 incurred in the process of adjudication, the principle to which I have adverted does not apply. And then I had some doubt about it, yet having regard to the special circumstances of the case, upon full consideration I think the Court of Session is right, and for this reason:—The right of retention is primarily a right against the client, and the client only, the owner of the estate. But by the law as administered in Scotland, which certainly gives rise as text writers have suggested, to very great anomalies, it is a right which prevails against the holder of the heritable security also. Now this is a very anomalous state of the law, because it enables the debtor to prejudice the rights of his creditors. And then the question is, how are those rights affected by the law agent obtaining adjudication? When the law agent who had this demand, having first constituted his debt, proceeded next to the process of adjudication, there is no doubt that by virtue of that adjudication, and what subsequently follows upon it, *viz.*, the infeoffments and other proceedings, he becomes a real creditor upon the lands,—but he becomes a real creditor upon the lands not in virtue of his lien, but in virtue of the proceedings which he has instituted. And what the Court of Session has decided is this, that the costs which he incurred in making himself a creditor with a real security, though they may constitute a very good ground of lien of retention against the client who employs him, cannot prejudice the rights of heritable creditors who have claims upon the estate prior to his lien. The Court of Session held that there was no authority to warrant any such extension of the law, that the law itself is subject to very considerable anomalies, and there being no precedent for it they thought that it ought not to be extended. And in that view of the case I entirely concur. That therefore disposes of the first question as to the £155.

My lords, the next question was as to whether or not these bills were still liable to be taxed. The argument was that there must be an end to the time when a solicitor's bills are liable to taxation—that here the debt was constituted a liquid debt in the year 1835, and that from repeated acts, the particulars of which it is not necessary for me to enumerate, from that time onwards to the time of his death, it may be taken to be clear that Mr. Cunningham had repeatedly recognised this as being a valid claim, and it is said that it cannot now be questioned, but that it must be taken to be good, and that it is not liable to taxation. The Court of Session, however, thought otherwise, and I think correctly, because this, as in the former case, is not substantially a question between the client and the law agent, but between the heritable creditors of the estate of the client and the law agent. Mr. Cunningham did all that he could do to confirm the amount of the debt due from him to his law agent, to ratify the finding

of the sheriff as to the amount; in short, everything he could to confirm that as a debt due from him; but his acts cannot prejudice the rights of those who had claims prior to any claims that his acts could affect. The Court of Sessions held, and I think rightly held, that in a process of ranking and sale of this nature, which is substantially a question between the other creditors holding a prior heritable security and the law agent, the circumstance that the client has chosen to dispense with taxation does not prejudice those who may insist upon it, even after the lapse of a considerable time.

"Then, my lords, the third question was one of this nature. I have already stated to you that Mr. Cunningham, the client, had three estates: Stonelaw, subject to large demands nearly exhausting the whole value, the estate being sold for £18,500, and the charge upon it being £15,000; and he had two other estates, which are the subject of adjudication. And the point which has been decided by the Lord Ordinary first, and approved of by the Court of Session, is this that the law agent could not part with his lien upon the one estate so as to leave the lien affecting the others; that, having a lien upon Stonelaw, and Kinninghouse, and Regent-street, he had no right to part with his lien upon Stonelaw, so as to leave it wholly to affect the two other estates.

"Now, my lords, with very great deference, I must say, after having considered the case very fully, I cannot do here otherwise than concur with the appellants. I think that the Court of Session have fallen into a mistake as to what is called the doctrine of catholic securities, which, although assuming a different name, is a doctrine as perfectly familiar in this country as it is in Scotland. It is very reasonable that, where a creditor has a claim upon two funds, he should take his payment rateably out of those funds, or, if he takes it, as he certainly may, only out of one of them, then that he should assign to the persons who are prejudiced by them a portion of the securities, so as to set the matter right. That is the doctrine of the law of Scotland, as well as of the law of England.

"But how does that apply to the case of a law agent insisting upon his lien; that is to say, the right to retain his client's deeds? That is something totally different, and the judges of the court below, in deciding this case, admitted that no such doctrine had ever been propounded or acted upon, until the case of *Clark v. Morrison* (29 Nov. 1887). And they all, in giving their judgment, expressly said that it was exceedingly difficult to apply the doctrine to such a case as this, and though they did arrive at this conclusion, they arrived at it evidently with very, very great doubt. And the judges in the present case, I think, acted solely, so far as authority went, upon that decision of *Clark v. Morrison*.

I do not feel myself called upon to state it as my decided opinion that the case of *Clark v. Morrison* is wrong. But I have no objection to say that I think it requires very great consideration before it can be held to be right. What does it amount to? It amounts to this, that where the client has several estates, a solicitor can never safely allow him to sell any, without ascertaining what is the proportionate value of that estate to the purchasers, and state to him, 'You must distribute a portion of your debts to me now, in order that those who hereafter may question my right to the other estates may have nothing to complain of.' That seems to me to be a doctrine so exceedingly inconvenient, that unless it be concluded by the most positive authority, I

should be very unwilling to recommend your lordships to act upon it.

"But I think that this case is distinguishable from the case of *Clark v. Morrison* upon two grounds, and therefore, even supposing the case of *Clark v. Morrison* to be rightly decided, still it would not govern the case now awaiting your lordship's decision. The distinctions are these: in *Clark v. Morrison* the whole estate was actually under diligence; the estate was conveyed to a trustee, who was to sell the whole, and to apportion the proceeds among the creditors rateably. One of the estates was subject to heavy burdens, and the trustee agreed, with the assent of all parties, that the second creditor upon the estate should take the property to himself, subject to the prior burden, and in consideration of that should release all his claim upon the present estate; that is to say, that he should become the purchaser of the estate upon which he held the second security, taking the money due to him as the purchase money. Then, when Mr. Grieve proceeded to sell the other estates, undoubtedly the Court held that the solicitor, the law agent, had lost his lien upon the estates to the extent of the proportion which the estates which had been taken by the other creditor bore to those which then remained to be sold. It was a very strong decision, but it was a decision applicable to the case only of estates that were actually under adjudication, and under process of ranking and sale.

"In this case, the ultimate completion of the sale of Stonelaw by the bank, and of the sale of Kinninghouse, did not take place until after the appellant had raised his summons of adjudication; yet it took place, and was substantially entirely completed before there was any decree of adjudication. It had been commenced long before there was any dispute about the payment of the bills at all. Therefore, it is the simple case of a client solvent at least apparently solvent (it was suggested that he really was insolvent for many years, but now *constat* that he was), and selling one of the estates of which he was the owner, and the solicitor parting with the deeds upon the completion of that sale. That makes a material distinction between this case and the case of *Clark v. Morrison*.

"But there is another distinction which puts this case upon a footing different from that of *Clark v. Morrison*, which is this: when the Bank of Scotland proceeded to get this estate of Stonelaw sold, in order to pay themselves out of the proceeds the heritable debt due to them of £15,000, they disputed the right of the appellant to hold these deeds against them at all; for when they took the security, they took it with an assignation of all the rights and deeds in their actual custody and possession. That was prior to the purchase of the property by Mr. Cunningham, and when Mr. Cunningham purchased, the vendors borrowed the deeds from the bank and gave a receipt, saying that they had borrowed them, and that they promised to return them on demand. Now the appellant contended that he was not a party to that, and that consequently when the deeds came into the hands of his client Mr. Cunningham, the purchaser, he was entitled to hold them against the bank. The bank said he was cognizant of it, and a great deal of discussion took place, which was protracted through several years, as to whether the appellant had any lien at all upon those deeds, or whether they had not been fraudulently or surreptitiously obtained from the bank, so as to get

from them deeds which they were entitled to hold, and which they parted with only for a limited purpose. Before the matter was completed, however, the bank said that they were not willing to protract the litigation any further, and that they would give the sum of £425 towards the discharge of the lien, which altogether amounted to £612 12s. 7d. With that offer the appellant was perfectly ready to close, and the £425 was actually paid.

"Now to say that where a solicitor has a lien for £612 12s. 7d. in respect of his costs upon all the deeds of his client, upon the client wishing to sell one of his estates, the solicitor must not part with the deeds without having paid in the exact proportion of the value of the estate sold to the other estates, would be carrying the doctrine to a length which unquestionably the case of *Clark v. Morrison* does not justify.

"In my opinion, therefore, the Lord Ordinary first, and the Court of Session afterwards, came to an erroneous conclusion in respect to the third finding. I think that there was nothing in what passed between the appellant and the bank, upon the sale of the Stonelaw estate, which prevented him (after giving credit for the £425) from asserting to the full extent his security, his claim against the proceeds of the other two estates.

"The only remaining point in this case lies in a very narrow compass—that is, the proposition of Miss Cunningham, who disputes the claim of the appellant to any lien against her, upon a ground which I think the Court of Session was perfectly right in sustaining in point of law, if the facts had warranted the application of it. What the court decided was this, that where there is a borrower and a lender, and the solicitor for the borrower acts as solicitor for both parties, he, preparing the security for the lender at the expense, as will ordinarily be the case, of the borrower, if he has any demand upon the title deeds which belong to the borrower, and affect his security, he is bound to disclose that fact to him, because otherwise he is deceiving his own client by leading the lender, who is as much his client as the borrower, to suppose that he is giving him the security of the estate free from any lien on his part, whereas, in truth, he afterwards sets up a right of retention against him. The Court of Session held that nothing was more dangerous than to allow transactions of this sort; and that where the same law agent acts for parties who have conflicting interests, the law must always be taken most strongly against him; and consequently they held in this case there was a personal exception against the appellant getting up this lien against Miss Cunningham.

"My lords, as regards the law there laid down, I entirely concur in the judgment of the Lord Ordinary and of the Court of Session afterwards. But upon looking attentively to the case, I cannot discover the least trace that Mr. Gray acted in any respect whatever as the law agent of Miss Cunningham. The proceedings here are in the nature of what we should call in this country a demurrer. There is no evidence gone into, except some letters, which I shall allude to presently. Miss Cunningham says that Mr. Gray acted as her agent; he denies that; he states he never saw Miss Cunningham in his life: Miss Cunningham says that he acted as her agent, communicating with her through a nephew, a son of Mr. Cunningham's; that is entirely denied; the transaction looks to me very much more like that which the appellant represents it than that which Miss Cunningham's

advisers represent it. Because this was no loan of money; Miss Cunningham was the creditor of her brother upon a bill or a note, or some transaction of that sort (I suppose some family arrangement); and Mr. Cunningham had, whether at her instance or not is immaterial, agreed that he would give her a real security for the amount he owed, £500 due to herself, and £200 to some person for whom she was trustee, making in all £700. . . . There is no evidence that Mr. Gray ever undertook to act as agent for Miss Cunningham, and consequently the application of the law is not warranted by the facts of this case.

"The result, therefore, my lords is, that I shall advise your lordships, as to the first two findings, to dismiss the appeal, and as to the rest of the case to declare that the appellant's right of retaining of the title deeds of Kinninghouse and Regent Street, Glasgow, was not affected by reason of his having parted with the title deeds of Stonelaw; and to declare further that the appellant was not barred by any personal exception from insisting on his right of retention against Miss Cunningham's claim on her bond for £700; and with this declaration I recommend that we remit the case to the Court of Sessions."

Ordered accordingly.

*Gray v. Graham and another*, 2 Macq. 485.

## EXAMINATION DISTINCTIONS.

A CIRCULAR, of which the following is a copy, has been sent by the secretary of the Incorporated Law Society to the candidates, who have given notice of their examination for next Michaelmas Term:

"I am directed by the council of the Incorporated Law Society to inform you that, in order to encourage the careful study of the law, the examiners of the candidates for admission on the Roll of Attorneys, propose on the examination to take place in next Michaelmas Term, and subsequently, to select the names of such of the candidates (not exceeding three) and who shall each be under the age of twenty-six years, who in passing their examination shall appear to have deserved honorary distinction, with a view to the council presenting to such candidates a prize of books or such other testimonial as may be deemed a suitable reward."

We trust this will receive the attention of the candidates for Hilary as well as for Michaelmas Term, in order that they may come well prepared to compete for the intended honours.

## LETTERS ON LEGAL ETHICS.

### ACCEPTING RETAINERS.—FOLLOWING INSTRUCTIONS.

It might be assumed that the same general if not universal rules which bind the attorney at law to a strict observance of truth, in all his statements, would be equally obligatory on the barrister at law. But there is some difference in their respective positions. It is said that the barrister, whilst he continues to attend the court, cannot refuse a brief, however objectionable to his moral feelings may be the cause he is "instructed" to advocate. On the other hand, the

attorney, before he undertakes to "put himself in the place" of the suitor, may inquire into the nature of the case, and if he thinks it nefarious may decline the retainer.

The general impression is that the barrister speaks only from his instructions, and is not responsible for their accuracy, either in the facts stated, or the legal conclusions drawn from them on his client's behalf. The attorney, however, has better means of previously ascertaining the truth by inquiries of the proposed client, by the investigation of the correctness of documents, of circumstances noticed in correspondence, by personal examination of witnesses, applying tests of veracity, and ascertaining the character and credibility of the suitor and his witnesses. The attorney, therefore, may be censurable for undertaking a bad case, where the barrister would be wholly blameless.

Practically, however, the attorney in the outset relies on the truth of his client's statement, and it is only in the progress of the case that he finds out or suspects that he has been deceived. We hear sometimes that a barrister "throws up his brief;" but this is after actual disclosures are made before the court which show that there is no chance of success. The attorney also may at any stage of a cause withdraw from it, on giving due and reasonable notice to the client of his intention. Of course it could not be endured that an attorney should undertake a case, perhaps give a favourable opinion of it, and then suddenly abandon it because he entertained doubts or suspicions, the grounds of which he might previously have investigated.

It should always be borne in mind that an attorney is an officer of the court, and as such is trusted by the judges; and whilst he discharges his duty to his client he is bound not to connive at any proceeding for the purpose of deceiving the court. He is to do the best he can for his client's interest; he should strengthen the various points of his case as far as possible, and ought not to expose any weak points of it. His professional opponents must find out the defects for themselves, and bring them before the court. The attorney is neither judge of the law nor jury on the facts; his duty is to bring his client's case for trial and adjudication in the best form and manner in his power; but without deceit.

ATTORNATUS.

## NOTES OF THE WEEK.

### LORD WENSLEYDALE.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal, granting the dignity of a Baron of the United Kingdom of Great Britain and Ireland unto the Right Honourable James *Baron Wensleydale*, and to the heirs male of his body lawfully begotten, by the name, style, and title of Baron Wensleydale, of Walton, in the county Palatine of Lancaster. From the *London Gazette* of 26th July.

### LAW APPOINTMENTS.

*William Gillespie Dickson*, Esq. Advocate, has been appointed Advocate-General of the Mauritius. Mr. Dickson passed Advocate in 1847, and is the author of a valuable Treatise on the Law of Evidence.

*Daniel M'Dermott*, Esq., Barrister-at-Law, has been appointed Magistrate of College-street Police Office, Dublin, in the room of Richard Bourke, Esq. deceased. Mr. M'Dermott was called to the Irish Bar in Easter Term, 1827.

*William Gernon*, Esq., Barrister-at-Law of the North East Circuit, has been appointed secretary to the Board of Charitable Donations and Bequests for Ireland, in the room of Daniel M'Dermott, Esq. Mr. Gernon was called to the Irish Bar in Easter Term, 1844.

### PROROGATION OF PARLIAMENT.

It is this day (28th July) ordered, by her Majesty in council, that the Parliament be prorogued from Tuesday the 29th day of July instant, to Tuesday the 7th day of October next.

### DEATH OF MR. BRYAN HOLME.

We have to record with much regret the demise on the 16th July of Mr. Bryan Holme, the founder of Incorporated Law Society. He was the senior partner in the eminent and highly respected firm of Holme, Loftus, and Young, New Inn. He was admitted on the Roll of Attorneys in 1802 and died in his 80th year. He was for some time past engaged in projecting another institution for the relief of aged and infirm attorneys under the name of "the Attorneys Benevolent Institution." We expect soon to collect materials for a full memoir of the deceased.

### LONDON UNIVERSITY DEGREES.

#### Doctor of Laws.

J. W. Smith (*Gold Medal*) . . . St. Mary Hall, Oxford.

#### Bachelors of Laws.—First Division.

Commins, Andrew . . . Queen's Coll., Cork.

Goward, Henry . . . Spring Hill College.

Hall, Rev. Chris. N. . . Highbury College.

Walker, Hopson P. . . Jesus Coll., Cambr.

#### Second Division.

Croebie, William . . . Rotherham College.

Jeffries, James . . . New College.

Millar, Fred. Chas. Jas. . . University College.

Pace, Henry . . . Stonyhurst College.

Rogerson, John Johnston . . . University of Edinburgh.

Satchell, Wm. Fletcher . . . University College.

Whatton, Rev. A. B. . . King's College.

#### Examination for Honours.

#### The Principles of Legislation.

Hall, Rev. C. Newman . . . Highbury College.

#### (Scholarships.)

{ Commins, Andrew . . . Queen's Coll., Cork.

{ Goward, Henry . . . Spring Hill College.

{ Millar, Fred. Chas. Jas. . . University College.

{ Walker, Hopson P. . . Jesus Coll., Cambr.

#### Laws of the Courts of Equity.

{ Millar, Fred. Chas. Jas. . . University College.

{ Walker, Hopson P. . . Jesus Coll., Cambr.

## CHANCERY VACATION SITTINGS.

THE Vice-Chancellor Sir R. T. Kindersley is the Vacation Judge. The chambers, No. 8, Stone-buildings. One of the chief clerks (Mr. Edwards or Mr. Pugh) will be in attendance on Tuesdays and Fridays, from eleven to one, and the office will be open on Tuesdays, Wednesdays, Thursdays, and Fridays.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

Gillmore v. Gill. July 28, 1856.

WILL AND CODICIL—CONSTRUCTION—LIABILITY OF REAL ESTATE TO DEFICIENCY WHERE PERSONAL INSUFFICIENT FOR DEBTS AND LEGACIES.

A testatrix, by her will, gave her real and personal estate to her executors, and directed them to convert the personal estate into money, and to pay a pecuniary legacy thereby given and her debts, and to hold the entire residue of her estate in trust for her grandchildren. By a codicil she gave various other pecuniary legacies, but it appeared in an administration suit that her personal estate was insufficient to pay the debts and legacies: Held, affirming the decision of Vice-Chancellor Stuart, that the real estate was chargeable with the deficiency.

Mrs. Gillett by her will gave and devised her real and personal estate to her executors, the defendants, and directed them to convert the latter into money, and to pay her debts and a certain pecuniary legacy thereby given, and to hold the entire residue of her estate in trust for her grandchildren. By a subsequent codicil she gave various other pecuniary legacies.

It appeared in an administration suit that the personalty was insufficient to pay the debts and legacies, and the Vice-Chancellor Stuart having held that the real estate was chargeable therewith and liable to make good the deficiency, this appeal was presented.

Faber in support; Dickinson for the executors.

The Lords Justices (without calling on Wigram contra) said the appeal must be dismissed.

Thompson v. Finch. July 28, 1856.

BREACH OF TRUST—SOLICITOR CO-TRUSTEE—STRIKING OFF THE ROLL.

A sum of money in the hands of trustees (one of whom was a solicitor) was lent on a security in the former's name, and which ultimately proved of no value, and the sum was lost. The Lords Justices, on affirming the decision of the Master of the Rolls, declaring that such trustee was liable, made an order on the solicitor to shew cause on a day named why, on the materials before the Court in that suit and two other suits, he should not be struck off the roll.

THIS was a suit by the tenant for life of a fund in the hands of two trustees (a Mr. Finch and a solicitor) for a declaration that Mr. Finch was liable to replace the fund which had been lent on a security in his name, and which ultimately proved of no value, and the money was lost. The Master of the Rolls having made a declaration accordingly, this appeal was presented.

R. Palmer and Shebbeare for the plaintiff; Follett and Osborne for Mr. Finch; Bagshaw and Southgate for certain infants.

The Lords Justices, in affirming the decree of the court below, said that the matter could not, as to the co-trustee, who was a solicitor, rest, but that it was the duty of the court, having regard to the interests of society at large, to make an order upon the

solicitor upon a day named to shew cause why, upon the materials before the court in the present suit, and also in *Finch v. Shaw*, and *Colyer v. Finch*, he should not be struck off the roll. The solicitor to the suitors' fund would take the necessary steps to carry out these directions.

## Master of the Rolls.

Hodgson v. Hodgson. July 28, 1856.

TRUSTEES—BREACH OF TRUST—PROFIT BY STRANGER—COSTS.

Trustees in order to obtain a greater rate of interest of a trust fund sold out the stock, and lent it to one of the testator's sons. Afterwards in a suit being threatened, the trustees invested the same amount of stock, but the cash paid for the purpose was less than was received on the sale: Held, that the trustees were not bound to give the estate the benefit of such difference. The plaintiff, who was entitled to a contingent interest, was put to his election between the stock re-purchased, or such a sum as the original stock produced laid out in the purchase of stock at the price of the day. The trustees were ordered to pay the plaintiff's costs, but no order as to those of the cestui que trustant—the sale having been made with their concurrence.

Held, that a stranger to whom a trust fund is improperly lent, will not be called on to account for the profit for the benefit of the estate, although acccus if lent to one of the trustees.

A TESTATOR gave to three of his children the interest of a sum of £2,000 Three-and-a-Quarter per Centa., each for life, and the principal to their children upon their death. It appeared that the trustees, in order to obtain a greater rate of interest, had sold out the whole £6,000 stock for £5,925 cash, and lent the same to one of the testator's sons. They, however, repurchased the same amount of stock, upon this suit being threatened, for a sum of £5,340.

R. Palmer and Karslake for the plaintiff, who had a contingent interest, claimed that the estate should have the benefit of the difference.

Russell, Cairns, Selwyn, Speed, Baggallay, and Keene for the defendants.

The Master of the Rolls said that although the sale and loan of the trust fund was a breach of trust, it did not appear that the trustees had made a profit thereout. The person to whom it was lent had not so traded with it as to produce any profit; but even if he had, the court could not have made him accountable as a trustee. If one of the trustees had made a profit, of course it enured for the benefit of the estate, but it was otherwise in the case of a stranger to the estate. The plaintiff would elect to take the stock repurchased, or to have such a sum as the original stock produced laid out in the purchase of stock at the price of the day. The trustees would pay the plaintiff his costs, but no order would be made as to those of the cestui que trustant, who had concurred in the sale.

Baldwin v. Baldwin. July 4, 24, 1856.

GIFT TO ECCLESIASTICAL COMMISSIONERS FOR BUILDING CHURCH—VALIDITY OF—MORTMAIN ACT.

Held, that a gift by will of a sum of money to

trustees in trust to pay the same to the Ecclesiastical Commissioners for the building and endowment of a church at S., if the parish of B., in which S. was situated, should at the testator's death, or within twenty-one years afterwards, be divided into two parishes, is valid under the 6 & 7 Vict., c. 7, although void under the 9 Geo. 2, c. 36.

WILLIAM BALDWIN, by his will, dated in May, 1854, gave a sum of £8,000 to trustees in trust to pay the same to the Ecclesiastical Commissioners for the building and endowment of a church at Sedgley, Staffordshire, if the parish of Bilston, in which that place was situated, should, at his death, or within twenty-one years after, be divided into two parishes. The parish had not yet been divided, and the question arose whether the bequest was valid.

*Cur ad vult.*

The Master of the Rolls said it must be assumed that the commissioners would not divide the parish unless it were expedient, and there appeared to be no reason why they should be deprived of the bequest. Although under the Statute of Mortmain (9 Geo. 2, c. 36), the gift was void, yet it was clearly within the scope of the Church Building Act (6 & 7 Vic. c. 7), and as such was valid.

### Vice-Chancellor Kindersley.

Prince of Wales Assurance Company v. Trulock.  
July 28, 1856.

INJUNCTION—EXECUTION IN ACTIONS ON POLICIES OF INSURANCE—DEMURRER FOR WANT OF EQUITY.

*In an action on a policy the defendant in equity obtained a verdict, and in another action upon a second policy the verdict also passed for him. The plaintiffs then filed a bill to restrain the issue of execution on the ground that one B., who had with the defendant obtained the policies by false representations, was kept out of the way, and could not be served with a subpoena: Held, that inasmuch as a new trial could be obtained at law on that ground, a demurrer for want of equity must be allowed.*

THIS was a bill to restrain the issue of execution in two actions brought against the present plaintiffs on two policies of insurance for £7,000 and £4,000 on the life of a Mr. Jodrell, on the ground that these policies were obtained by false representations of his being a temperate man and having a very good life. It was alleged that one Brade, who had combined with the defendant in the scheme, had been purposely kept out of the way on the trial, and that the plaintiffs were unable to serve him with a subpoena, although they had sought to do so by all the means in their power. This was a demurrer for want of equity.

Baily and C. T. Simpson in support; Glasses and Freeman contrâ.

*[Cur. ad vult.]*

The Vice-Chancellor said that it did not appear by the bill what pleas had been pleaded to the actions, which was very material. From the statements in the bill, it was obvious that the person procuring the policies in the manner alleged would never be entitled to recover on either, and the facts alleged would constitute a good defence at law to any action brought in respect of the policies. It was not suggested that the plaintiffs were ignorant on going to trial of any of the facts except of Brade's beneficial interest in the policies. It was stated that his non-production was a surprise on them. But the very statement that if he had been produced their case would have

been proved showed there was a complete defence at law, and that the miscarriage could be set right. It also appeared that when the second trial came on, no attempt was made to postpone on the ground of Brade's absence, but a verdict was allowed to go in that also. It was competent on that ground to move for a new trial, and therefore as relief could be had at law, the demurrer must be allowed.

### Vice-Chancellor Wood.

In re Watford Burial Board. July 28, 1856.

BURIAL BOARD ACT—CONVEYANCE FOR NEW GROUND—SANCTION OF CHARITY COMMISSIONERS.

*Held, that the sanction of the Charity Commissioners under the 16 & 17 Vict., c. 187, s. 17, is necessary to a petition for the sanction of the Court to a proposed conveyance, under the Burial Board Act, 15 & 16 Vic. c. 85, of a piece of land applicable to the repairs of a parish church, to a burial board for a new burial ground.*

THIS was a petition for the sanction of the Court to a proposal for the conveyance, under the Burial Board Act, 15 & 16 Vic. c. 85, of a piece of land applicable to the repairs of the parish church of Watford, to the burial board for a new burial ground, the old one having been ordered to be closed. The board proposed to pay a yearly sum of about £80, which was the average proceeds of the land in question.

W. H. Terrell in support.

The Vice-Chancellor said that as this was charity land, an order could not be made without the consent of the Charity Commissioners (under the 16 and 17 Vic. c. 187, s. 17).<sup>\*</sup> It must be shewn that the application was made with their sanction, as well as that they approved of the particular proposal. The delay might be inconvenient to the parties, but the application should have been made before.

<sup>\*</sup> Which enacts that, "before any suit, petition or other proceeding (not being an application in any suit or matter actually pending) for obtaining any relief, order, or direction concerning or relating to any charity, or the estate, funds, property, or income thereof, shall be commenced, presented, or taken, by any person whomsoever, there shall be transmitted by such person to the said board, notice in writing of such proposed suit, petition, or proceeding, and such statement, information, and particulars as may be requisite or proper, or may be required from time to time, by the said board, for explaining the nature and objects thereof; and the said board, if upon consideration of the circumstances they so think it may, by an order or certificate signed by their secretary, authorise or direct any suit, petition, or other proceeding to be commenced, presented, or taken with respect to such charity, either for the objects and in the manner specified or mentioned in such notice, or for such other objects, and in such manner and form, and subject to such stipulations or provisions for securing the charity against liability to any costs or expenses, and to such other stipulations or provisions for the protection or benefit of the charity, as the said board may think proper," &c. "and (save as herein otherwise provided) no suit, petition, or other proceeding for obtaining any such relief, order, or direction as last aforesaid, shall be entertained or proceeded with by the Court of Chancery, or by any court or judge, except upon and in conformity with an order or certificate of the said board."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, AUGUST 9, 1856.

### LAW BILLS POSTPONED OR NEGATIVED, 1856.

HAVING in the last number recorded, under the various heads to which they appeared to belong, the bills—upwards of fifty in number—which passed both Houses of Parliament, and finally received the royal assent, we proceed now to sum up the (so called) failures of the session, classifying the several projects in the departments of law and practice which it was sought to improve or alter, namely: 1st. The Administration of Justice; 2nd. Mercantile or Commercial Law; 3rd. The Law of Property; 4th. The Church, Poor Law, and Marriages; 5th. The Criminal Law, Proceedings before Magistrates, Public Health, &c.

On comparing the general review we gave last week, of the acts passed in the recent session, with those which have been negatived or postponed, it will be found that, whatever may have been defective in the political, social, or financial labours of the Government, there has been a considerable amount of success in the projects for amending the law, both in the number of the acts which arrived at maturity, and in their practical or general importance. It must be acknowledged, indeed, that some valuable measures have been deferred, to which the profession gave their support; but on the other hand there are several which, by the commencement of the next session, may be rendered less objectionable, if not more beneficial.

1st. In the department of the ADMINISTRATION OF JUSTICE, it may be observed with regard to the bill for improving the *appellate jurisdiction* of the House of Lords, that although the defects of that great tribunal had been often urged, the remedy proposed by the bill of the last session was for the most part novel and somewhat startling. It ought not to excite our surprise that a change, which involved some of the constitutional principles of the House of Lords, should be received with doubt and opposition, particularly in reference to the question of life peerages, and the creation of a new class of noble yet salaried judges. After all that has been said for and against the remedy in question, it is perhaps better that its farther

consideration should be postponed till another session, when the excitement that first accompanied the proposition of life peerages shall have subsided, and the important *judicial* nature of the subject may receive a calm and circumspect consideration in all its bearings; so that in the result, the House, as a legislative body, may be relieved of the duty of construing and administering the law, or be reinforced so effectually as to give undoubted satisfaction to the country.

Next in importance to the High Court of Appeal, is that of the series of measures proposed to be substituted in the place of the *ecclesiastical courts*. In regard to the branch of "testamentary jurisdiction," besides the direct opposition which was made by the several classes of persons whose interests were affected by the bill, there was a great conflict of opinion amongst our most learned legislators as to the tribunal destined to perform the duties of the abolished courts. The three principal consulting doctors agreed on the nature of the disease, but *disagreed* on the remedy. The Solicitor-General at length yielded several important points to Sir Fitzroy Kelly and Mr. Collier, and incorporated many of their views in his amended bill. But these concessions were not deemed sufficient by the House of Commons, and another session has consequently been lost.

The same fate attended Mr Headlam's bill for abolishing the archidiaconal, manorial, peculiar, and other petty courts, and transferring their jurisdiction to the Diocesan Courts, leaving untouched the Prerogative Courts. Nothing short, however, of the total abolition of all vestige of ecclesiastical dominion in secular matters will meet the demand of the age.

Next came Mr. Hadfield's bill to repeal the restriction which prevented, under a heavy penalty, any agency allowance to pass between the proctor and the solicitor who introduced the business, who is responsible for the costs, and has bestowed a large part of the labour (sometimes the whole) of collecting the evidence and preparing the case for hearing. This proposed repeal was opposed by the proctors, but the session was too far advanced to make any useful progress with the bill.

Whenever it shall be determined to abolish



the ecclesiastical courts, due provision must be made for adjudicating on *divorce* and *matrimonial causes*. Whether this jurisdiction ought to be transferred to a new court of record, or to one or more of the present superior courts, remains to be discussed and decided.

The ecclesiastical courts, having likewise jurisdiction over the *offences of the clergy* (whether doctrinal or moral), it is manifest that effectual provision must be made for hearing and adjudicating on those important questions before that branch of jurisdiction can be abolished. Various plans have been suggested both by lords spiritual and temporal to effect this object, but at present without any satisfactory result.

So far as to the appellate jurisdiction of the House of Lords and the various courts ecclesiastical.

Two other measures were brought forward relating to the Common law Courts, but they have also been postponed, namely: 1st. Sir Fitzroy Kelly's bill for amending the procedure in actions and extending the rules of evidence. This bill was very properly postponed by the learned member. Indeed, its provisions have not yet been discussed in Parliament, and require careful consideration. 2nd. Mr. Craufurd's Judgments Execution Bill to enable English judgments to be enforced in Ireland and Scotland, and *vice versa*. We presume that as this measure has been before the House in two sessions of Parliament without success, there must be some potent objections of which we are not aware. Perhaps some influential debtors out of our jurisdiction are able to stir up an opposition and prevent effectual proceedings against their property. If this be so, we trust justice will overtake them next session.

2nd. As to MERCANTILE OR COMMERCIAL LAW, our readers are aware that although the Joint Stock Companies Act has received the royal assent, including the valuable provisions relating to "limited liability" partnerships, the bill for the amendment of the general *Law of Partnership* has been withdrawn, in consequence of an alteration having been carried which would have defeated the main object of the bill. Whether it will be again revived seems at present doubtful.

The next important amendment related to *Shipping Dues* and *passing Tolls*, which involved the interests of many corporate towns and seaports, whose representatives succeeded in postponing the relief sought by our numerous merchants and ship owners. The bill was referred to a select committee, and in the next session it may be expected that a satisfactory adjustment will be effected,—compensating the ports and harbours so far as may be just and expedient, and relieving our shipping of oppressive burthens.

The bill for abolishing the preference given by the present law to *specialty* over *simple contract debts* made but little progress, and the views of the learned member who introduced it have not yet been sufficiently considered. These changes in our old laws require searching investigation before they are adopted.

3rd. The bills which have not been proceeded with respecting the LAW OF PROPERTY are the following:—

The amendment of the law of *copyholds*, which was introduced late in the session by the Lord Chancellor, was only intended, we believe, for consideration before next session, and probably several additional provisions will be suggested for the further amendment of that part of the law.

The bill for placing the *reversionary interest of married women in personal property* on the same footing as *realty*, although it passed the House of Commons, made no progress in the House of Lords beyond the first reading. This was owing, we believe, to some mistake or misapprehension in the language of the bill, and which will probably be made clear by another session.

Further amendments were proposed by a bill relating to advances for the *drainage* of lands; and another bill was introduced for amending the law relating to the conveyance of lands for *charitable uses*, both of which were postponed at the end of the session, and will probably be re-proposed.

4th. The bills relating to the abolition or regulation of CHURCH RATES; the further amendment of the POOR LAWS; the provisions regarding TITHES Commutation Rent Charges, have been postponed; and the bill for removing the restrictions in the law of MARRIAGE as to the sisters or nieces of deceased wives, which has often passed the Commons, was negatived by the Lords.

5th. Several bills for amending the CRIMINAL LAW, the PROCEEDINGS BEFORE MAGISTRATES, &c., stand over till another session. Amongst these are—

Trust Property Criminal Appropriation.  
The Summary Jurisdiction of Magistrates.  
The Qualification of Justices of the Peace.  
Aggravated Assaults.  
Public Prosecutors.  
Public Health Acts amendment.  
Burial Acts amendment.

To which postponements may be added two bills for amending the Oath of Abjuration; and the bill for the reform of the Corporation of London. It has also been proposed to appoint a Minister of Justice, with a competent staff, for the purpose of superintending and revising all proposed new enactments.

## EPITOME OF THE NEW COUNTY COURT ACT.

THIS act will not come into operation till the 1st October next, except that the scale of costs, the rules of practice, and forms of proceeding may in the meantime be prepared. We purpose, therefore, at present to submit to our readers a mere "bird's eye" view of the several enactments.

As to the JURISDICTION of the county courts—

The provisions of the act are applicable to bills of exchange and promissory notes, notwithstanding the Summary Procedure Act, 18 & 19 Vict. c. 67 (s. 2).

Summonses may be issued against persons out of the jurisdiction if the cause of action arose within it (s. 15).

The metropolitan courts are to be deemed as one district, and summonses may be issued either in the plaintiff's district or the defendant's (s. 18).

The county court judge is empowered to order a trial in another district (s. 22).

All actions, except for *crim. con.*, may be tried in the county court, even on questions of title, by consent (ss. 23, 25). And without consent when reduced by set-off under £50 (s. 24).

The superior courts may also order trials in the county courts (s. 26).

But no action can be brought in a county court on the judgment of a superior court (s. 27).

No costs on a judgment by default in the superior court, not exceeding £20, are allowed, unless by the order of a judge (s. 30).

A *certiorari* may be issued to remove a plaint on the order of a judge of the superior courts, on giving security for the amount of the claim and the costs, not in the whole exceeding £100 (ss. 38, 40, 41, 49).

Where the sum sued for is above £20 on contract, or above £5 in tort, the defendant may object to the trial in the county court, and on giving security the proceedings in the county court will be stayed (s. 39).

On an application for a writ of *prohibition*, the superior court or judge is finally to dispose of the matter without a declaration (s. 42).

Instead of a writ of *mandamus*, the matter is to be decided on a rule or order (ss. 43, 44).

The amendments or alterations in the PRACTICE of the county courts are principally as follow:

If the sum in question be above £20, the defendant may be required to give notice of his defence, otherwise there will be judgment by default (ss. 28, 29).

Where the judgment does not exceed £20, the court may order the amount to be paid by instalments. Above that sum, the plaintiff's consent is requisite (s. 45).

Priority of execution is to depend on the time of applying to the registrar for a warrant (s. 46). And when issued from a superior court from the delivery of the writ to the sheriff (s. 47).

Any error in the proceedings may be amended by the order of the judge (s. 57).

Warrants for commitment are regulated by sections 69, 70, 71.

*Appeals* from the county court may be prevented by consent in writing (s. 69).

The bankruptcy or insolvency of the plaintiff is not to abate the action, if the assignees elect to continue it (s. 62).

*Affidavits* may be sworn before a judge or registrar without fee, or before a commissioner for taking affidavits in chancery or any superior court (s. 58).

The fees on proceedings in the county courts are specified in the schedule to the act (s. 78); subject to be increased or diminished by the Lords of the Treasury with the Lord Chancellor's consent (s. 79).

The costs of proceedings in the county courts are regulated by sections 38 to 87 inclusive. The scale is to be settled by five of the county court judges, with the Lord Chancellor's approval, and the costs are to be taxed by the registrar. Where the taxation is between attorney and client, the registrar must be satisfied that the client has agreed in writing to pay costs beyond the scale.

The proceedings for obtaining possession of small tenements are regulated by sections 50 to 56 inclusive. And actions of *replevin* are regulated by sections 68 to 68 inclusive.

Where claims are made in respect of goods taken in execution, the claimant must deposit the value in court to abide the decision of the judge (s. 72).

And where goods are seized under the process of the court, the landlord is entitled to rent in arrear, regulated by the nature of the tenure (s. 75).

The important provisions for the salaries of the judges and officers are embodied in sections 80 to 84 inclusive.

The "registrar" (formerly called the "clerk") of the court is now limited to a single court, and is entitled to compensation for the loss he may sustain. A proviso, however, is made in favour of the clerks of the courts mentioned in the schedules of the original act 9 & 10 Vict. c. 95.

The provisions of the act which relate to the superior courts are to apply to the Common Pleas at Lancaster and the Court of Pleas at Durham (s. 86).

The acknowledgments of deeds by married women under the 8 & 4 Wm. 4 c. 74 may be made before a judge of the county court (s. 78).

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### JOINT STOCK COMPANIES.

19 & 20 Vict. c. 47.

[Concluded from page 239.]

### Official Liquidators.

88. For the purpose of conducting the proceedings in winding-up a Company, and assisting the court therein, there shall be appointed a person or persons to be called an official liquidator or official liquidators;

and such appointment shall be made as follows :  
(that is to say)

In cases within the jurisdiction of the Court of Chancery in England or Ireland, or of the Court of Sessions in Scotland, or of the Court of the Stannaries, the court having jurisdiction may, after requiring due security, appoint such persons or person, either provisionally or otherwise, as it thinks fit, to the office of official liquidators; it may from time to time remove any person or persons so appointed, and fill up any vacancy occasioned by such removal or by the death or resignation of any such appointee or appointees; if one person only is appointed, he shall have all the powers hereby given to several liquidators; if more persons than one are appointed, the court shall declare whether any Act hereby required or authorised to be done by the official liquidators may be done by all or any one or more of such persons;

In cases within the jurisdiction of any court of bankruptcy, the official assignee to be named by the court shall be the official liquidator; but it shall be lawful, in cases where the winding-up takes place at the suit of a creditor, for the major part in value of the creditors assembled at a meeting to be held for the purpose, and in cases where the winding-up takes place at the suit of a contributory, for the major part in value of the contributories assembled at a meeting to be held for the purpose, to appoint an official liquidator to act concurrently with the official liquidator so named by the court.

89. The official liquidators or liquidator shall be described by the style of the official liquidators or official liquidator of the particular company in respect of which they or he are or is appointed, and not by their or his individual names or name; they or he shall take into their or his custody all the property, effects, and things in action of the company, and shall perform such duty in reference to the winding-up of the company as may be imposed by the court.

90. The official liquidators shall have power, with the sanction of the court, to do the following things:—

To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company:

To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same;

To sell the real and personal and heritable and moveable property, effects, and things in action of the company by public auction or private contract, with power, if they think fit, to transfer the whole thereof to any person or company, or to sell the same in parcels:

To execute, in the name and on behalf of the company, all deeds, receipts, and other documents they may think necessary, and for that purpose to use, when necessary, the company's seal;

To refer disputes to arbitration, and compromise any debts or claims;

To prove, claim, rank, and draw a dividend, in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or

insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;

To draw, accept, make, and endorse any bill of exchange or promissory note, and to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by such company in the course of carrying on the business thereof;

To do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

91. The official liquidators may, with the approval of the court, appoint a solicitor or law agent, and such clerks or officers as may be necessary to assist them in the performance of their duties: there shall be paid to such solicitor or law agent, clerks and officers, such remuneration by way of fees and otherwise as may be allowed by the court.

92. There shall be paid to the official liquidators such salary or remuneration, by way of percentage or otherwise, as the court directs.

98. When the affairs of the company have been completely wound up, the court shall make an order or decree declaring the company to be dissolved from the date of such order or decree, and the company shall be dissolved accordingly.

94. Any order or decree so made shall be reported by the official liquidators to the registrar of joint stock companies, who shall make a minute accordingly in his books of the dissolution of such company.

95. In England, the Lord Chancellor of Great Britain, with the advice and consent of the Master of the Rolls, and any one of the Vice-Chancellors for the time being, or with the advice and consent of any two of the Vice-Chancellors, may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company in the Court of Chancery as may from time to time seem necessary; but, until such rules are made, the general practice of the Court of Chancery, including the practice hitherto in use in winding-up companies, shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings for winding up a company, and official liquidators shall be considered as occupying in all respects the place of an official manager.

96. In Ireland, the Lord Chancellor of Ireland may, as respects the winding up of companies in Ireland, with the advice and consent of the Master of the Rolls in Ireland, exercise the same power of making rules as is by this act herein-before given to the Lord Chancellor of Great Britain; but, until such rules are made, the general practice of the Court of Chancery in Ireland, including the practice hitherto in use in Ireland in winding up companies, shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings for winding up a company, and official liquidators shall, in all respects, be considered as occupying the place of an official manager.

97. In Scotland, the Court of Session may, by act of sederunt, exercise the same power of making rules of practice as herein-before given to the Lord Chancellor of Great Britain as regards England;

but, until such rules are made, the general practice of the Court of Session in suits pending in such Court shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings for winding up a company, and official liquidators shall, in all respects, be considered as possessing the same powers as any trustee on a bankrupt estate.

98. The Vice-Warden of the Stannaries may from time to time, with the approval of the Lord Chancellor of Great Britain, make such general rules as may be necessary or expedient for the purpose of carrying into execution the powers conferred by this act upon the court of the said Vice-Warden; but, subject to such rules, the general practice of the said court in cases within the jurisdiction thereof shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings under this act, and any order made by the Vice-Warden of the Stannaries may be enforced in the same manner in which orders made in proceedings within the ordinary jurisdiction of such court are enforced; and for the purpose of jurisdiction any company registered under this act engaged in working any mine within, and subject to, the jurisdiction of the Stannaries, shall be deemed to be resident within the Stannaries, and at the place where such mine is situate. It shall be competent for the Vice-Warden in any suit instituted against any shareholder or contributory of a company so registered, to authorise the service of process on such shareholder or contributory in any part of England or Wales; provided, that it shall be lawful for the Lord Warden to remit at once any cause or matter pending before him on appeal against any decree or order of the court made in pursuance of the power conferred upon it by this act for the winding up of such a company to the Court of Appeal in Chancery, which shall thereupon have power to hear and determine such appeal, and to make such order or orders therein as may seem fit.

99. Any two commissioners of bankruptcy, appointed by the Lord Chancellor of Great Britain, may, as respects the courts of bankruptcy in England, and the commissioners of bankrupt in Ireland may, as respects the courts of bankruptcy in Ireland, make rules as they respectively from time to time, but subject to the approval of the Lord Chancellors of Great Britain and Ireland respectively, think fit, for the purpose of regulating the proceedings in such courts for winding up companies; but, subject to such rules, the general practice of the courts of bankruptcy in England and Ireland respectively, in cases within the ordinary jurisdiction of such courts, shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings under this act; and any order made by any commissioner of bankruptcy in such proceedings may be enforced in the same manner in which orders made in proceedings within the ordinary jurisdiction of such court are enforced.

100. The Lord Chancellor of Great Britain as respects the Courts of Chancery and Bankruptcy in England, the Lord Chancellor of Ireland as respects the Courts of Chancery and Bankruptcy in Ireland, the Court of Session in Scotland by act of sederunt as respects proceedings in such court, may make rules specifying the fees to be paid in respect of proceedings taken under the third part of this act for winding up a company in such courts respectively and the fees so paid in any court of chancery or bankruptcy shall be applied in the manner in which fees taken in such courts in ordinary proceedings are applied; and as respects fees to be paid in

like proceedings in the court of the Vice-Warden of the Stannaries, it shall be lawful for the Vice-Warden to authorise fees to be taken not exceeding in number or amount the fees so authorised from time to time by the Lord Chancellor of Great Britain to be paid in courts of bankruptcy, and the council of the Prince of Wales, or the special commissioners for managing the affairs of the Duchy of Cornwall, as the case may be, may direct in what manner the monies arising from such fees are to be applied towards the annual expenses of the court of the Stannaries, or towards the payment or in augmentation of the present official salaries.

101. The district commissioners of the Court of Bankruptcy and the judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under the third part of this act in cases where any company is wound up by the Court of Chancery in England or Ireland or by the court of session in Scotland; and it shall be lawful for such court to refer the whole or any part of the examination of any witnesses under the third part of this act to any such commissioner, although such commissioner is out of the jurisdiction of the court by which the order or decree for winding up the company was made; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a district commissioner of the Court of Bankruptcy, judge of a county court, commissioner of bankrupt, assistant barrister, or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court which made the order for winding up the company has; and the examination so taken shall be returned or reported to such last-mentioned court in such manner as it directs.

#### *Voluntary Winding-up of Company.*

102. A company may be wound up voluntarily,

- i. Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved:
- ii. Whenever the company in general meeting has passed a special resolution requiring the company to be wound up voluntarily.

Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except so far as may be required for the for the beneficial winding up thereof, but its corporate state and all its corporate powers shall, notwithstanding any provision to the contrary in its articles of association, continue until the affairs of the company are wound up.

103. Notice of any special resolution to wind up a company voluntarily shall be given, as respects companies registered in England in the *London Gazette*, as respects companies registered in Scotland

in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*.

104. The following consequences shall ensue upon the voluntary winding up of a company:

- i. The property of the company shall be applied in satisfaction of its liabilities, and, subject thereto, shall, unless it be otherwise provided by the articles of association, be distributed amongst the shareholders in proportion to their shares:
- ii. Liquidators shall be appointed for the winding up the affairs of the company and distributing the property:
- iii. The company in general meeting may appoint such person or persons as it thinks fit to be a liquidator or liquidators, and may fix the remuneration to be paid to them.
- iv. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:
- v. When several liquidators are appointed, every power hereby given may be exercised by any two of them:
- vi. The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, or the debts in respect of which the several classes of contributories are liable, call on all or any of the contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts of the company and the costs of winding it up, and they may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:
- vii. The liquidators shall have all powers hereinbefore vested in official liquidators, and may exercise the same without the intervention of the court:
- viii. All books, papers, and documents in the hands of the liquidators shall at all reasonable times be open to the inspection of the shareholders:
- ix. When the creditors are satisfied, the liquidators shall proceed to adjust the rights of the contributories amongst themselves, and for the purposes of such adjustment they may make calls on all the contributories to the extent of their liability for any sums they may deem necessary, and they may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:
- x. As soon as the affairs of the company are fully wound-up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and such account, with the vouchers thereof, shall be laid before such person or persons as may be appointed by the company to inspect the same; and upon such inspection being concluded the liquidators shall proceed to call a general meeting of the shareholders for the purpose of considering such account; but no such meeting shall be deemed to be duly held unless one month's previous notice,

specifying the time, place, and object of such meeting, has been published, as respects companies registered in England in the *London Gazette*, and as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*:

- xi. Such general meeting shall not enter upon any business except the consideration of the account; but the meeting may proceed to the consideration thereof, notwithstanding the quorum required by any regulation of the company to be present at general meetings is not present thereat; and if, on consideration, the meeting is of opinion that the affairs of the company have been fairly wound-up, they shall pass a resolution to that effect, and thereupon the liquidators shall publish a notice of such resolution, as respects companies registered in England in the *London Gazette*, and as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*, and shall also send a return to the Registrar of Joint-Stock Companies of such resolution, and on the expiration of one month from the date of the registration of such return the company shall be deemed to be dissolved:
- xii. If within one year after the passing of a resolution for a winding-up the affairs of the company such affairs are not wound-up, the liquidators shall immediately thereafter make up an account showing the state of the affairs and the progress which has been made in winding-up down to that date, and they shall add thereto a report stating the reasons why the winding-up has not been completed, and a general meeting shall be called to consider the same, and so on from year to year until the winding-up of the affairs of the company is completed:

All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

105. The voluntary winding-up of a company shall not prejudice the right of any creditor of such company to institute proceedings for the purpose of having the same wound-up by the court.

#### PART IV.

##### *Registration Office.*

106. The registration of companies shall be conducted as follows: (that is to say)

- i. The board of trade may from time to time appoint such registrars, assistant registrars, clerks, and servants as they may think necessary for the registration of companies under this act, and remove them at pleasure;
- ii. The board of trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid;
- iii. The Board of Trade may from time to time determine the place or places at which offices for the registration of companies are to be established: Provided always, that there shall be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no company,

shall be registered except at an office within that part of the United Kingdom in which by the memorandum of association the registered office of the company is declared to be established;

- i. The Board of Trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies;
- v. Every person may inspect the documents kept by the registrar of joint-stock companies; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a copy or extract of any document or any part of any document, to be certified by the registrar; and there shall be paid for such certified copy or extract such fee as the Board of Trade may appoint, not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words; and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever;
- vi. The existing registrar, assistant registrars, clerks, and other officers and servants in the office for the registration of joint-stock companies, shall, during the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Board of Trade;
- vii. There shall be paid to any registrar, assistant-registrar, clerk, or servant that may hereafter be employed in the registration of joint-stock companies such salary as the Board of Trade may, with the sanction of the commissioners of the treasury, direct;
- viii. Whenever any act is herein directed to be done to or by the registrar of joint-stock companies, such act shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint-stock companies or in his absence by the assistant-registrar, in Scotland to or by such officer as the Board of Trade may appoint, and in Ireland to or by the existing assistant-registrar of joint-stock companies for Ireland; but, in the event of the Board of Trade altering the constitution of the existing registry office, such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the companies to be registered as the Board of Trade may appoint.

**PART V.—REPEAL OF FORMER ACTS, AND TEMPORARY PROVISIONS.**

*Repeal.*

107. There shall be repealed,—

- i. The act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten;
- ii. An act passed in the eleventh year of the reign of her present Majesty, chapter Seventy-eight, intituled An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.

**iii. The Limited Liability Act, 1855:**

But such repeal shall not take effect with respect to any company completely registered under the said act of the eighth year of her present Majesty until such company has obtained registration under this act, as herein-after mentioned.

108. The following acts: (that is to say)

- i. An act passed in the eleventh year of the reign of her present Majesty, chapter forty-five, and intituled An Act to amend the Acts for facilitating the Winding-up of the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and Winding-up of Joint Stock Companies and other Partnerships;
- ii. An act passed in the thirteenth year of the reign of her present Majesty, chapter one hundred and eight, and intituled An Act to amend the Joint Stock Companies Winding-up Act, 1848;
- iii. An act passed in the eighth year of the reign of her present Majesty, chapter one hundred and eleven, and intituled An Act for facilitating the Winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements;
- iv. An act passed in the ninth year of the reign of her present Majesty, chapter ninety-eight, and intituled An Act for facilitating the Winding-up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements:

shall not apply to companies registered under this act, nor to companies registered under the said act of the eighth year of the reign of her present Majesty, chapter one hundred and ten, from and after the date at which they have obtained registration under this act, as herein-after mentioned.

109. No repeal hereby enacted shall effect—

- i. Anything duly done under any acts hereby repealed before such repeal comes into operation;
- ii. Any right acquired or liability incurred under any such acts before such repeal comes into operation;
- iii. Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence against any such acts committed before such repeal comes into operation;
- iv. Any proceeding to be taken in the prosecution of any order for winding up a company made before such repeal comes into operation.

*Temporary Provisions.*

110. Every company completely registered under the said act of the eighth year of her Majesty, chapter one hundred and ten, shall, on or before the third day of November, one thousand eight hundred and fifty-six, and any other company duly constituted by law previously to the passing of this act, and consisting of seven or more shareholders, may at any time hereafter, register itself as a company under this act, with or without limited liability, subject to this proviso, that no company shall be registered under this act as a limited company unless either a certificate of complete registration with limited liability under the Limited Liability Act, 1855, has been obtained by it, or an assent to its being so registered has been given by three-fourths in number and value of each of its shareholders as may have been present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for that purpose.

111. Previously to the registration under this act of any existing company, there shall be delivered to the registrar of joint stock companies the following documents; that is to say—

i. In the case of a company completely registered under the said act of the eighth year of her present Majesty, chapter one hundred and ten, if such company is not intended to be registered as a limited company, a list showing the names, addresses, and occupations of all persons who, on the day of registration, are holders of shares in the company, with the addition of the shares held by such persons respectively, distinguishing each share by its number;

ii. If such company as last aforesaid has obtained a certificate of complete registration with limited liability under the limited Liability Act, 1855, or if it has not obtained such a certificate, but is intended to be registered as a limited liability under the provisions of this act, the above list shall be accompanied with a statement specifying the following particulars:—

The nominal capital of the company, and the number of shares into which it is divided:

The number of shares taken, and the amount paid on each share:

Such statement shall also contain, in case the company has not previously obtained a certificate of limited liability, but is intended to be registered as a limited company under this act.

The name of such company, with the addition of the word "limited" as the last word thereof:

iii. In the case of any other company duly constituted by law previously to the passing of this act, and consisting of seven or more shareholders, if it is not intended to be registered as a limited company, there shall be delivered to the registrar of joint stock companies such list of shareholders as is herein-before mentioned, and also a copy of any act of Parliament, royal charter, letters patent, deed of settlement, or other instrument constituting or regulating the company:

iv. If any such company as last aforesaid is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars; that is to say,

The nominal capital of the company, and the number of shares into which it is divided;

The number of shares taken, and the amount paid on each share:

The name of the company, with the addition of the word "limited" as the last word thereof.

112. The list of shareholders and any other particulars relating to the company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the act passed in the sixth year of the reign of his late Majesty King William the Fourth, chapter sixty-two; but no fees shall be charged in respect of the registration under this act of any company completely registered under the said act of the

eighth year of the reign of her present Majesty, chapter one hundred and ten, in cases where the liability of the shareholders is not intended to be limited, or where such company has already obtained a certificate of complete registration with limited liability.

113. Upon compliance with the foregoing requisitions, the Registrar of Joint-Stock Companies shall certify under his hand that the company so applying for registration is incorporated as a company under this act, and in the case of a limited company, that it is limited, and thereupon such company shall be incorporated accordingly, and all provisions contained in any deed of settlement, act of Parliament, royal charter, or letters patent, or other instrument constituting or regulating the company, shall be deemed to be regulations of the company within the meaning of this act, and all the provisions of this act shall apply to such company in the same manner in all respects as if it had been originally incorporated under this act; subject, nevertheless, to the reservations herein-after contained with respect to the existing rights of creditors and other persons; and subject to this proviso, that, except in so far as herein-after permitted, no company constituted by act of Parliament shall have power to alter any of the provisions contained in such act of Parliament, and no company constituted by royal charter or letters patent shall have power, by special resolution or otherwise, to alter any of the provisions contained in such charter or letters patent, without the sanction of the Board of Trade.

114. Any existing company may, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "Limited," or do any other act that may be necessary.

115. The certificate of incorporation given to any existing company, in pursuance of this act, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this act shall have been complied with, and the date of such certificate shall be deemed to be the date at which the company is incorporated under this act.

116. The registration of any existing company under this act shall not, nor shall any act of the company subsequent to such registration, prejudice any right which previously to such registration has or which would, if no such registration had taken place, have accrued to any creditor or other person against the company in its corporate capacity, or against any person then being or having been a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being or having been a member of such company, as he would have been entitled to in case such registration had not taken place.

## COURT OF CHANCERY—NEW ORDER.

OBBLITERATING STAMPS.

1st August, 1856.

THE Right Honorable Robert Monsey Lord Cranworth Lord High Chancellor of Great Britain, doth hereby, in pursuance of an act of Parliament passed in the fifteenth and sixteenth years of the reign of her present Majesty, intituled "An Act for the Relief of the Suitors of the High Court of Chancery," and in pursuance and execution of all other powers

enabling him in that behalf, order and direct as follows, that is to say:—

1. So much of the general order bearing date the 3rd day of December, 1852, as directs that every officer of the Court of Chancery who shall receive any document to which a stamp shall be affixed shall immediately upon the receipt thereof obliterate or deface such stamp by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained, and that no such document shall be filed or delivered out until the stamp thereon shall be obliterated or defaced as aforesaid, shall be and is hereby discharged.

2. Every officer of the Court of Chancery who shall receive any document to which a stamp shall be affixed, pursuant to the orders of court in that behalf, shall immediately upon the receipt of such document cancel or deface the stamp thereon by writing upon such stamp his name, or the initial letters of his name, in such a manner as to show clearly and distinctly that such stamp has been made use of, and so that the same may not be again used; and no such document shall be filed or delivered out until the stamp thereon shall have been cancelled or defaced in manner aforesaid.

3. In all cases where stamps impressed upon adhesive paper are used, the stamp affixed to the document shall be of an amount corresponding as nearly as is practicable with the amount of the stamp which such document requires, in order that no greater number of adhesive stamps may be affixed to any document than is actually necessary.

(Signed) CRANWORTH, C.

## REVIEW OF THE SESSION 1856.

### FROM THE PARLIAMENTARY DEBATES.

It may be useful to give an abridgment of the speeches made in the House of Commons towards the close of the session, on the 25th July, so far as they relate to proposed measures which are interesting to the legal practitioner.

Mr. *Disraeli* thus describes the subjects which were brought before Parliament during the session:

"We have been asked, in the first place, to construct a high court of appeal, the highest court of appeal in the last instance. All will acknowledge that that is a question which may be described as the greatest of legal questions. In all countries it may be described as the greatest of legal questions; but in this country it is more than the greatest of legal questions, because it is also the greatest of constitutional questions, because, in having to consider the creation and constitution of a high court of appeal, we have, from the nature of our institutions, not only to fulfil that great object, but we have incidentally to consider even the very elements of a Senate, or rather of an Upper Chamber. We have been called upon this year to consider a new law of partnership, framed upon new principles, and adapted to this advanced age, which should facilitate the application of capital to commerce in the most commercial country in the world. We have been called upon to consider the whole law of divorce, and an important change in the law of marriage. We have been called upon to consider the whole discipline of the church; the testamentary jurisdiction of the country; the police of the country; a reform of the most ancient, the most wealthy, and the most pow-

erful municipality, intimately connected with the history and liberties of England; the superannuation of the whole civil service of the country; the criminal appropriation of trust property; the education of a whole kingdom; the retirement of bishops from their sees, and last, but not least, the correct means of ascertaining the most important produce of the empire by a system of agricultural statistics."

Next was noticed the series of measures announced in the Speech from the Throne at the commencement of the sessions.

"The first—which was the simplest—applied to the assimilation of the mercantile law of England and of Scotland. The second was that improvement in the law of partnership, founded altogether upon new principles, and aiming at the increased application of capital to commerce, to which I have already referred. The third was a measure which was to relieve the mercantile marine of this mercantile country from charges of great weight under which it had long laboured, and against which it had long complained. The fourth series of measures, and perhaps the most important, consisted of large and extensive reforms, first in the law of Great Britain, and, next, in the law of Ireland.

"With respect to the first question—the assimilation of the mercantile law of England and Scotland—I cheerfully admit that the Government may be considered to have fairly redeemed their pledge. A measure to change the mercantile law of Scotland has now passed, I believe, both Houses, and a measure to change the mercantile law of England was introduced in this House. It contained, indeed, a principle of the most dangerous kind, which aimed at terminating the necessity in commercial transactions of written contracts; but the practical sagacity of the House of Commons and the protest of the whole commercial community saved the country from the dangers of that unfortunate proposition. That portion of the bill was defeated, and the measure so amended was passed. We may therefore admit that the Government, on the whole, have fairly redeemed the pledge they gave with respect to the first series of measures mentioned in the gracious Speech.

"How, Sir, did we proceed with regard to the improvement of the law of partnership? What were the fortunes of that great bill which was to be founded upon new principles, which was to be adapted to this advanced and enlightened age, and which, in this peculiarly commercial country, was to facilitate the application of capital to commerce? I am bound to admit that there was every evidence of sincerity on the part of the Government with respect to this second head, for on the first day we met—the 1st of February—the important measure was introduced by the Vice-President of the Board of Trade. After discussion—after being amended and reprinted on the 26th of February—on the 10th of March that measure was abandoned. But her Majesty's Government, determined to deal with a question which they believed to be of paramount importance, lost no time in profiting by the discussion which had taken place, and on the 7th of the ensuing month a second bill to amend the law of partnership, and to accomplish all those great objects which I have enumerated, was introduced by the right hon. gentleman. I find that this second bill was introduced on the 7th of April, and on the 14th of July I find it was abandoned. Here we have an important subject recommended to our 'attentive consideration' in the



gracious Speech from the Throne, and not only one bill brought in and abandoned by her Majesty's ministers, but a second bill on the same subject introduced, and also abandoned."

To this part of the right honourable member's speech *Mr. Lowe* candidly conceded:

"That the Partnership Amendment Bill was not an adequate redemption of that passage in the Queen's speech, in which it was announced that measures for the amendment of the law of partnership would be laid before Parliament; but the right hon. gentleman had entirely forgotten a very important measure—not second to any which had passed this session—which nobly redeemed, and even more than redeemed, the pledge contained in the royal speech. The *Joint Stock Companies Bill* was not called a measure to amend the law of partnership, but it did amend the law of partnership very materially, and it placed the law in a more advanced position than it stood upon the statute book of any country in the world, not even excepting America. The right honourable gentleman said he (*Mr. Lowe*) had withdrawn that bill early in March—and that was true enough so far as it went. He had withdrawn the bill because the right honourable gentleman the member for Oxfordshire—to whom, by the way, the right honourable gentleman the member for Buckinghamshire seemed to delegate the legislative department of the Opposition—had taken some objection to it, on its being reprinted, on a point connected with the forms of the House. He was not experienced in the forms of the House, but, to show that he had no wish to take an unfair advantage by what he had done, he had withdrawn the bill and introduced a fresh one. With regard to the Partnership Amendment Bill, it received a second reading and passed through committee, but between the third reading and the passing of the bill a clause was inserted entirely repugnant to the principle of the bill. He did not complain of this course—he had no right to do so—but the principle of the bill being overthrown he withdrew it. He did not 'abandon' it, he withdrew it, having been defeated by an adverse vote of the House, and he conceived he had no other course left him without being false to the principle on which he had introduced the bill. So much for two of the cases of 'abandonment' which the right honourable gentleman had paraded in his speech."

Passing over the animadversions of *Mr. Disraeli* with regard to the unsuccessful efforts of *Mr. Baines* to improve the Poor Laws, the failure to amend some of the laws relating to Ireland; and the subject of the Local Dues and Passing Tolls imposed on our Mercantile Marine (which do not immediately concern our readers)—we come to the proposed improvements in the Law.

"First, there was a bill to establish a jurisdiction in the matter of wills and administration. That bill was introduced on the 4th of March, and on the 10th of July it was abandoned. The next bill was the great measure to found an appellate jurisdiction in the last instance. It was brought from the Lords on the 9th of June, and on the 10th of July it was abandoned. The third measure related to a subject of no less importance than the law of divorce, which was introduced to us on the 4th of July. Let me remind the House of the circumstances under which that bill came down to us. After

great difficulty it had passed through the House of Lords, where it had been subjected to the criticism of some of the greatest intellects of the country, and it dealt successfully with most of those great points which are the opprobrium of our law of marriage. That bill was introduced into our House on the 4th of July, and on the 17th it was abandoned. The next measure of legal reform related to a subject which is a disgrace—I hesitate not to say—to this civilized and enlightened age—it dealt with the criminal appropriation of trust property. I can conceive no subject more deserving of the attention of the Government than this. The most iniquitous consequences have for a long series of years resulted from the state of the law upon this subject; and I am bound to say that, speaking upon the highest authority—without which I should not presume to allude to the question—I believe that what is taking place in this country almost every day renders it still more necessary that a bill of this kind should pass. That bill was abandoned on the 21st of July. The next measure—the Church Discipline Bill—was not abandoned, but it was introduced into the other House, and then rejected on a division."

The eloquent leader of the opposition next proceeded to criticise various other proposed amendments, such as the better regulation of the civil service, the corporation of London, the local management of the metropolis, the promotion of the public health, the regulation of charities, agricultural statistics, &c.

A very able, but general, answer to the attack on the Government, was given by Lord *Palmerston* to the following effect:—

"The great charge which the right hon. gentleman has made is that a large number of measures relating to important matters, the merit of which he did not dispute, which we have introduced to Parliament have failed, and he has inquired the cause. I might, if I were disposed to argue the question in that way, speak of it as a question of internal dissensions in this House—'*Si causam queris circumspice.*' If we ask the cause why so many of these measures have failed, I might answer that it was on account of the obstruction they met with from gentlemen on the other side of the House. ('No, no!') They had failed from the resistance which they met in the House; but I do not state that in accusation of those whose obstruction has been the cause of the failure; I do not state this with the view of reproaching them for their conduct, because, for the reasons I have to state, I do not think there is any just cause of complaint that good measures are obstructed.

"If we were in an arbitrary country in which the sovereign power had nothing to do but to call round it men conversant with the different matters on which it might be necessary that new laws should be passed—if we had nothing to do but to collect the cumulative wisdom of different persons learned in the matters on which we wished to legislate, and having framed laws in accordance with their views at once to issue them on authority, and cause them to be carried into effect—then, of course, measures would not be brought forward one day to be withdrawn the next, or abandoned after long and earnest discussion. But we must recollect that such is not the constitution of this country, and much it is to

our advantage that it is not so. When, however, we are enjoying great advantages from our constitutional organisation, we must take the rough and the smooth, the good and the bad together, and must not repine at defects which are inherent in our system, from which, on the whole, we realise such great and incalculable advantages.

"The Government finds on looking round that in certain departments of the State, in particular portions of the administrative system, affecting, perhaps, our commerce, our agriculture, and other interests, abuses and inconveniences have arisen, requiring practical remedies to be applied. The Government does its part; it devises measures calculated, as it thinks, to accomplish the ends in view, and submits those measures to Parliament; and when they come into this House no one supposes that their success or failure is to depend entirely upon their merit or demerit. Measures of great importance, calculated to produce important reforms in particular branches of the system into which abuses have crept, must necessarily meet with great resistance, partly from prejudice, partly from want of information, and partly from interested motives; because in all abuses there must be a certain number of men who profit by them, and who in our representative system are enabled to bring their resistance to bear upon this House. Therefore it is no reflection on a measure that it is opposed, and that when it comes into Parliament it should meet, in the first instance at least, with such resistance as to cause its failure. And so it is with regard to many of those measures to which the right hon. gentleman has adverted.

"I do not state that as a reproach to those by whose obstruction these measure have failed. It is the inevitable accompaniment of free discussion. There is, of course, the intercourse of members of Parliament with persons out of the House whose organs they necessarily are, and I may observe that if all classes of persons out of doors have not organs in this House, then we have an imperfect representation of the community. Any man who expects that great improvements in any parts of our system can be completed on the first attempt, and in one session, will be greatly disappointed. It never has been so, it never will be so, and it never can be so. The best measures under a representative Government cannot be carried until they are well discussed, till prejudices have been overcome, and interests mollified. If carried they would not work well, unless the country was convinced not only of the abuse, but of the goodness of the remedy that was to be applied. If any man will look back to the different improvements that have been made by the Legislature in this country he will see that such has been the course of events. And, though this slowness of progress is mortifying to those who bring in measures of improvement — though it is disappointing to that portion of the community out of doors who are anxiously looking for these improvements, and though, perhaps, it exposes this House to a censure from those ardent spirits, who, not hesitating to be here, think that if they were here their energy and eloquence would overcome all resistance, and carry their views into practice — though these disappointments and mortifications occur, yet the delays that take place must not be regarded as disadvantageous to the country, because measures of improvement must fall in producing their utmost effect if they are carried too hastily, before the public mind is fairly brought into accor-

dance with such measures, and before they are thoroughly sifted by ample discussion.

"Therefore I say that, though we must regret that many of those measures which we felt it our duty to introduce in the course of this session have not passed into law, yet a year or a session is but a moment in the history of a people. They are long in the lives of ardent and ambitious men, but they are not long in the history of the progress of a country, and a country need not suppose that because good measures are not passed at once, other measures of the same kind will not at some future time pass into a law. There has been no want of application to their public duties on the part of the members of this House. There never was a session during which, in the same number of days, this House has devoted a greater number of hours by day and by night than in the one now about to close. We do not complain of opposition to the Government, especially when it is founded upon a real conviction, derived from constituencies or large bodies of men out of doors, that the measures proposed are either bad in their nature, overstrained in their enactments, or difficult in their provisions. I do not complain of that; but standing here — if I may without presumption undertake a duty which the right hon. gentleman has cast upon me — to defend the House of Commons, I say that, in my opinion, there is nothing in any of the statements which the right hon. gentleman has made that ought in the slightest degree to weaken the confidence which the country has felt, and, I maintain, does feel, in this House as a branch of the Legislature."

## CORONERS FOR DORSETSHIRE.

### ALTERATION OF DISTRICTS.

WHEREAS under and by virtue of an order of her Majesty in council, dated the 11th day of February, 1848, the county of Dorset was divided into six districts for the purposes of the act made and passed in the 7th and 8th years of her Majesty's reign, intitled "An act to amend the law respecting the office of county coroner," and a petition having been presented to her Majesty in council praying that an alteration might be made in the aforesaid division of the said county, her Majesty, by and with the advice of her privy council, was on the 28th July, 1856, pleased to order, that the following parishes now comprehended in the Cerne district of the county of Dorset, namely, the parishes of Alton Pancras, Buckland Newton, Cattistock, Cerne Abbas, Nether Cerne, Chesilborne, Frome St. Quinton, Godmanstone, Glanvilles Wooton, Hillfield, Evershot, Melbury Sampford, Stockwood, Hermitage, Melcombe Horsey, Mappowder, Minterne Magna, Puddletrenthide, Pudham, Plush, Sydling St. Nicholas, Chilfrome, Frome Vanchurch, Toller Fratrum, Toller Porcorum, Wraxall, and Wynford Eagle, be taken from the said Cerne district and be added to the Dorchester district in the said order in council mentioned, and that the out parishes of St. Martin and St. Mary in Wareham be added to the said Dorchester district; and it was also ordered that the following parishes, now comprehended in the said Cerne district in the said order in council mentioned, namely, the parishes of Askerswell, Chelborough East, Chelborough West, Chilcombe, Corscombe, Halstock, Hook, North Poorton, Powerstock, Rampisham, Ryme Intrinica, and

Witherstone, be taken from the said Cerne district and added to the Bridport and Beaminster district in the said order in council mentioned.—From the *London Gazette* of 1st August.

### LAW OF COSTS.

OF TRUSTEES OF RELIGIOUS CONGREGATION REFUSING TO RETIRE ON BECOMING DISQUALIFIED.

A DECREE was made on an information and bill removing three trustees of the Low Meeting House, at Berwick-upon-Tweed, upon their having adopted the opinions of the Free Church of Scotland, whereas by the trusts of the meeting house the congregation was to be in as strict connexion as practicable with the Established Church of Scotland (reported 7 Hare, 445). This decree was affirmed with costs by the Lords Justices in appeal, and it was referred to the master to appoint new trustees in the place of such three trustees, and in the stead of two who had died.

Upon the case coming on on further directions, the Vice-Chancellor Wood said—

"If a trustee voluntarily retires from a trust like the present on account of difference of opinion, he pays no costs,—whether he will receive costs is a question for the discretion of the court, and may depend upon the circumstances of his retirement.

"But here, all the proceedings in the suit have been occasioned by the trustees' refusal to retire from their trust. They took what the court considered an improper and perverse view as to the duties imposed upon them, and the suit for their removal and all proceedings consequent thereon have been occasioned by their taking that view. All the costs now in question have been caused by this improper conduct on the part of the trustees in refusing to retire from the trust. Whatever differences there may be between this case and that of the *Attorney-General v. Murdock*, 2 De Gex and S. 122, were disposed of by the decree. The hostile defendants, therefore, must pay the costs of the appointment of the new trustees, except any costs occasioned by the defendant Thompson being out of the jurisdiction.

The hostile defendants were entitled, however, to appear before the master, to shew that the debts secured by the promissory notes were properly incurred, and were not a breach of trust, and that they ought to be a charge upon the trust property. The relators and plaintiffs must therefore pay those defendants their costs of the inquiry as to the promissory notes and debts on the trust property. The above costs must be set off against each other. No other order will be made as to the costs of the hostile defendants."

*Attorney-General v. Murdock*, 2 Kay and J. 571.

### LAW OF ATTORNEYS AND SOLICITORS.

#### ATTACHMENT AGAINST ATTORNEY FOR NOT APPEARING TO ANSWER MATTERS.

A RULE was obtained on the defendant's attorney in a cause, upon notice of the rule to be given to him, on a day named therein, to answer the matters contained in the affidavits upon which the application was founded.

The attorney not appearing on being called three times in open court, he was adjudged to be in contempt, and it was ordered that a writ of attachment be issued forth against him for the same.

*Easton v. Neville*, 18 Com. B. 548.

### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

#### DECISION ON DYCE SOMBRE'S CASE—ONUS PROBANDI—COSTS.

THE final decision in this case was pronounced on the 1st July, by Dr. *Lushington*, in the presence of the two Lords Justices, and of Sir John Patteson, Sir Edward Ryan and Sir Laurence Peel. The following is a report of so much of the judgment as involves the points of law under which the *onus probandi* was thrown on the appellants to establish the testator's soundness of mind, in opposition to the *prima facie* legal presumption, consequent upon the existence of the commission of lunacy against him. The learned judge said:—

"Mr. Dyce Sombre, the testator, died on July 1, 1851. On the 25th June, 1849, he executed a will: and on August 13, in the same year, a codicil. The will and codicil are propounded by Mr. Prinsep, one of the executors therein named. On the 26th of January last, after proceedings of almost unexampled length, the judge of the Prerogative Court pronounced against the will and codicil, on the ground that the deceased was not of sound mind when he executed the same; he also condemned Mr. Prinsep, the executor, and the East India Company, who had made common cause with him, in all the costs of this litigation. From this decree an appeal had been presented, and their lordships are now called upon to determine whether the judgment of the court below is well founded or not. The learned judge proceeded with great minuteness to state in detail that in July, 1843, the deceased was found by a commission issued under the authority of the Lord Chancellor to be of unsound mind, and to have been so from October, 1842; that he was allowed to travel in various parts of England under the care of a physician; that he made his escape from Liverpool, and went to Paris; that endeavours were made to reclaim him as a lunatic; that the French government declined to give him up; that an examination was instituted by the French authorities in October, 1843 (with the assistance of physicians of the highest character in Paris), by whom he was deemed to be of sound mind, and consequently remained his own master in France; and that subsequently a petition was presented to the Chancellor for the purpose of having the commission superseded. Lord Lyndhurst gave permission to the deceased to come to England, and he was again examined by physicians appointed by Lord Lyndhurst, who declined to supersede the commission. After this judgment Mr. Dyce Sombre visited Egypt, St. Petersburg, and Brussels, where he caused investigation to be made into his sanity, and all the physicians who were consulted by him at those places reported him to be of sound mind, and in 1847 the whole of his income, after the payment of £4,000 per annum to Mrs. Dyce Sombre, was left to his own disposal.\* Under the authority of the Lord Chancellor he was examined by English physicians. The result of this investigation was that Lord Cottenham, in April, 1849, refused the prayer of a petition for superseding the commission.

\* This is a remarkable part of the case. If he was deemed competent to dispose of the whole of his enormous income, it may be asked, was he not competent to dispose of the capital?

and it remained in force. The instructions for the will were given a short period before the judgment just mentioned, and the attorney who was employed was a solicitor not previously engaged on behalf of the deceased, but the solicitor of Mr. Prinsep.

"The commission not having been superseded, the legal presumption is against the validity of any testamentary instrument; and consequently the *onus* of proving the soundness of mind of the testator is imposed upon the party setting up the instrument. Some instances have occurred where the validity of a will has been pronounced for, notwithstanding that the testator was under the protection of a commission, as in the case of *Cartwright v. Cartwright* (1 Phill. Eccles. Rep. 100). Under such circumstances, it is competent to the party setting up a testamentary instrument to maintain—1st, that the deceased was always of sound mind; 2dly, that though he may have been formerly of unsound mind, he had entirely and completely recovered; or, 3dly, that the will was made during a lucid interval. The main question for our decision in this case is soundness or unsoundness of mind at the periods of giving instructions for and of the execution of the will and codicil. To effect this object—to enable us to form a just estimate of the conduct of the deceased at various times—to satisfy ourselves whether particular actions are to be ascribed to peculiarities and eccentricities, or arose from a diseased state of mind—it will be necessary to commence our inquiry from a very early period. The learned judge next proceeded to examine in great detail the birth and origin of the deceased, his early history and education, his society and habits up to his mother's death, and held that as to the personal conduct of Mr. Dyce Sombre, it might be described as the most unrestrained sensual indulgence of every kind.

"The learned judge next applied himself to the character of the testator. He said—We think that we may safely conclude that the Asiatic origin and habits of the deceased would probably render him more prone to jealousy and suspicion than would be the case with respect to Englishmen; that circumstances would excite jealousy and all kinds of suspicion in the mind of the deceased which would produce no such effect upon an English gentleman of education, accustomed to good society; therefore, many actions of the deceased may be fairly attributed to and explained by these peculiarities of character. It may be conceded that in Mr. Dyce Sombre's case circumstances very slight in themselves, and ordinarily wholly inadequate, might create, and in a violent degree, jealousy and suspicion; but the invention of facts wholly without foundation, the belief of circumstances wholly improbable, if not absolutely impossible, even in a person of such a character, never can be accounted for by similar reasoning. The learned judge next adverted to the arrival of Mr. Dyce Sombre in England in 1838; his marriage to Miss Jervis, the daughter of Lord St. Vincent, in 1840; his removal to Hanover-lodge, when a commission was issued on the 1st of July, 1843, when he was found of unsound mind, and to have been so from the October preceding. The presumption of law is that the verdict of the jury was well founded, and that the deceased continued insane so long as the commission was not superseded. It is true that he may have partially recovered—may have had lucid intervals; but the *onus probandi* must lie upon whomsoever asserts the affirmation of complete or partial recovery. Such would be the

presumption if this were the verdict of the jury alone; but on the present occasion the insanity at some period antecedent to the preparing and execution of the testamentary papers propounded, is not denied, and moreover we are all clearly of opinion that the evidence now produced as to the year 1843 establishes beyond doubt that the deceased was then of unsound mind. The doctrine laid down by Lord Thurlow, in *'The Attorney-General v. Parfiter'* (3 Brown, 442), slightly modified by Lord Eldon (*'ex parte Holyland'*, 11 Ves. 11) strictly applies. We think that the best mode of arriving at the truth in this inquiry is to examine, in the first instance, the evidence by which the insanity in 1843 was established to the satisfaction of the jury, and to our own conviction; to ascertain in what particular delusion this insanity manifested itself; to trace the continuance or disappearance of such delusions; to inquire whether fresh delusions arose in the mind of the testator, and whether they were transient or continued to affect the mind of the deceased till the periods of the execution of the will and codicil."

The various facts of the case were then minutely stated and the evidence quoted in support of the allegation of the respondents, that the principal delusions of the testator still continued up to and at the time he made his will. As the details relating to Mr. Dyce Sombre's conduct are, in many respects, of a painful and disgusting nature, and as the litigation has been finally terminated, it is unnecessary for our present purpose to set them forth. We shall, therefore, conclude with a general statement of the grounds on which the Judicial Committee decided against the validity of the will:—

"We have examined the early history of Mr. Dyce Sombre; we have duly considered the weight to be ascribed to his Asiatic origin and habits; and, in endeavouring to ascertain the state of his mind, have allowed those causes to have the utmost influence which could be reasonably given to them. It is not improbable that from feelings peculiar to those of eastern birth, and fostered from early youth by prejudice and custom, the first seeds of insanity may have sprung, being called into life and activity by collision with European manners and observances. But, however this may be, most certain it is that in 1843 the deceased had become subject to mental derangement. In 1846 he remained in the same state, and the only question raised was, when did he recover. In 1847 there was some remission. Towards the end of 1848 the ablest physicians were divided in opinion, and strong certificates of sanity were sent to the Chancellor, who, however adhered to the medical men appointed by him to examine Mr. Dyce Sombre, and refused to supersede the commission in March, 1849. We have endeavoured to form our judgment from what Mr. Dyce Sombre said and did rather than from what others might have thought of him. Great power of memory, considerable shrewdness and dexterity, aptitude to receive lessons, though not to learn successfully to practice them, were frequently displayed by the deceased; but we cannot trace any period during this long interval at which we could say that the deceased was relieved from all morbid impressions. On the contrary, throughout the interval, whenever we have had the means of examination, symptoms of a diseased mind have shown themselves. We cannot aver that Mr. Dyce Sombre

ever recovered; and it is not, and cannot be, denied that after proved and notorious insanity the burden of proving such recovery must rest on those who allege it. But, however this may be, in the year 1849, at the time of the preparation and execution of the will and codicil, there is abundant proof under his own hand that all the former delusions remained in full force and vigour. 'The Refutation'—this extraordinary production (continued the learned judge)—proves that there still existed in viridi observantia the delusion as to Mrs. Dyce Sombre, the supposed Lord Ward, and on other matters. We want no books of medical science, no legal authorities, to enable us to decide this case; there is no vexata questio as to partial insanity. The true description of this case is insanity showing itself in divers particulars, and, so far as appears, without any perfect intermission. We are of opinion that when Mr. Dyce Sombre executed this will, and when he executed this codicil, he was of unsound mind, and consequently, that the acts so done by him were null and void: therefore we shall advise her Majesty to affirm the judgment of the learned judge of the Prerogative Court, pronouncing against the validity of these instruments."

There then remained the important question of the costs of the suit, which, it has been estimated, cannot be less than £20,000. Upon this part of the judgment of the Prerogative Court, the learned judge said:—

"We are of opinion that at the time the testamentary instruments were propounded, it was fit that their validity should be submitted to investigation and decision. Important dispositions of this will are in favour of persons who could do nothing to protect their own interest; in favour of poor persons in India, dependents and pensioners of the testator, or of his benefactress, the Begum, and the great bulk of the property is directed to the establishment of charitable institutions for the benefit of the natives of India, of which the East India Company were to be the trustees. If, therefore, there was any reasonable doubt as to the insanity of the deceased at the time these instruments were made, the East India Company would scarcely have performed their duty if they had not taken the necessary steps to have that doubt removed by the adjudication of the proper tribunal. Is it possible to deny that there were grave doubts as to the testamentary capacity of the deceased at the period when the will and codicil were made? Men of the greatest eminence in the medical profession, gentlemen who had been in the habit of associating with him, had declared the strongest opinions as to his sanity. The solicitors who had prepared the instruments, and had taken all the precautions which it was in their power to take, to guard against imposition, were entirely satisfied that the testator was perfectly competent to dispose of his property. In this case there is not the slightest pretence for saying that the appellants have had anything whatever to do with the inception or preparation of these instruments. It is true that for the purpose of this suit the East India Company are admitted to be entirely identified with Mr. Prinsep; and Messrs. Deeborough and Young, who prepared the will and codicil, were Mr. Prinsep's solicitors, and were by him introduced to the deceased. But having so introduced them, Mr. Prinsep takes no further part in the matter; all the communications of the solicitor take place with Mr.

Dyce Sombre himself, either personally or by letter: the instructions are in his own handwriting. Mr. Prinsep was neither party nor privy to the will; he knew nothing of its contents, and he refused to be acquainted with them. It is said that Mr. Prinsep was guilty of misconduct during the time that attempts were made to supersede the commission, but we feel bound to say that we find no sufficient evidence to this effect. We do not find any letter written by Mr. Prinsep of the same character with those of Lord and Lady Combermere, nor any evidence fixing him with the misconduct with which he is charged. Besides, the material question for the present purpose is, had Mr. Prinsep such a knowledge of the real state of the testator's mind, when those instructions were executed, as to make it unfit that he should propound them for probate? We are clearly of opinion that he had not. Although we much regret the expense, and although we are of opinion that the evidence under the commission is August, 1848, establishes a manifest case of lunacy, we feel bound to remember that that was not the opinion of Sir C. Trevelyan, who had known Mr. Dyce Sombre in India, and that such was not the opinion of Baron Solaroli, who is one of the judges to whom costs are awarded in this judgment, and who insisted, in October, 1848, on the sanity of his brother-in-law, Mr. Prinsep, after his return from India, did not renew his acquaintance with the deceased till the summer of 1844, nearly twelve months after the date of the commission, and after reports in favour of his sanity had been made by foreign physicians of the highest authority. This judgment, so far as it awards costs against Mr. Prinsep and the East India Company, cannot be maintained. A much more doubtful question is whether we can give them costs out of the estate. Very great expense has been incurred in this case. There are two distinct parties asserting the validity of these documents; there are three parties opposing them. The case is in many respects very peculiar. Though the commission of lunacy was never superseded, he was treated under it in a manner in which no other lunatic in our experience was treated. He was intrusted with the whole income of his large property, after making a provision for his wife; and the circumstances were such as in our opinion to make it essential to the purposes of justice that the validity of these papers should be submitted to judicial decision. We have decided to advise her Majesty to vary the decree below with respect to costs; to give no costs against the appellants, but to allow them out of the estate one set of costs only between Mr. Prinsep and the East India Company, including the costs of the appeal. With respect to the respondents, they will each have their own costs out of their share of the property."

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

*D. D. Keane, Esq., and A. K. Stephenson, Esq., both of the Norfolk circuit, have been appointed revising barristers, in the room of M. Prendergast, Esq., Q. C. now judge of the City of London Sheriffs' Court and John Worlledge, Esq., now Judge of the Suffolk County Court (Circuit No. 33). Mr. Keane was called to the bar 12th June, 1835, and Mr. Stephenson, 27th January, 1852.*

## ORDERS IN COUNCIL.

### COUNTY AND BOROUGH COURTS.

It is declared by her Majesty in Council that the jurisdiction of the court of record in the city of Worcester, called "The Court of Pleas of the City of Worcester," be excluded in all causes whereof the county court holden in the said city hath cognizance, in which the debt or damage sought to be recovered shall not exceed £20; and in all actions of ejectment between landlord and tenant, wherein the annual rent of the premises of which possession is sought to be recovered shall not exceed £50.

Whereof the mayor, aldermen, and citizens of the city of Worcester for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.—From the *London Gazette* of 29th July.

### SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855.—WORCESTER BOROUGH COURT.

It is ordered by her Majesty in Council that, within one month after such order shall have been made and published in the *London Gazette*, all the provisions of the "Summary Procedure on Bills of Exchange Act, 1855," shall extend and apply to the court of record holden in the city of Worcester, called "The Court of Pleas of the City of Worcester," except in any causes whereof the county court holden in the said city hath cognizance.

And it was further ordered that all the powers or duties exercisable by the court or a judge, under any of the sections of the said act hereby applied to the Court of Pleas of the City of Worcester, shall, as regards matters and proceedings in the said court, be exercisable and exercised by the judge of the said court, and that all the powers or duties exercisable by the masters of the said courts, or any three of them, under the first section of the said act, shall, as regards matters and proceedings in the said court of pleas, be exercisable and exercised by the registrar of the said court.—From the *London Gazette* of 29th July.

### COMMON LAW PROCEDURE ACTS, 1852 AND 1854 —WORCESTER BOROUGH COURT.

It is ordered by her Majesty in council, that, within one month after such order shall have been published in the *London Gazette*, all the provisions of the "Common Law Procedure Act, 1852," and of the said "Common Law Procedure Act, 1854," and the rules made and to be made in pursuance of the said acts, shall extend and apply to the court of record holden in the city of Worcester, called "the Court of Pleas of the city of Worcester," except in any causes whereof the county court holden in the said city hath cognizance.

And it was further ordered, that all the powers or duties exercisable by the court or a judge under the said "Common Law Procedure Act, 1852, and 1854," hereby applied to the court of pleas of the city of Worcester, shall, as regards matters and proceedings, therein be exercisable and exercised by the judge of the said court, that all the powers or duties exercisable by a master under the said acts shall, as regards matters and proceedings in the said court, be exercisable and exercised by the registrar of the said court, and that the powers or duties exercisable by a sheriff under the said acts, shall as regards matters and proceedings in the said court, be exercisable and exercised within the jurisdiction of the said court by the serjeant-at-mace, of the said city of Worcester.—From the *London Gazette* of 29th July.

## SITTINGS OF SHERIFF'S COURT, MIDDLESEX.

### TRINITY VACATION, 1856.

The following are the sittings in Red Lion-square appointed by the Sheriff of Middlesex for the trial of issues under writs of trial, and to assess the damages on writs of inquiry:—

Thursday	August 7.
"	" 14.
"	Sept. 4.
"	" 25.
"	Oct. 2.
"	" 28.
"	" 30.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

*Horne v. Barton.* August 2, 1856.

### REHEARING DECREE AFTER THIRTY-ONE YEARS —TITLE OF PETITIONERS.

Held, that before a decree, made in the year 1825, and under which a settlement was made carrying out the trusts of the testator's will, could be reheard, for the purpose of rectifying such settlement, the petitioners must establish their right under the will. The petition was accordingly directed to stand over, in order to a bill being filed.

THIS was a petition to rehear a decree made by Sir William Grant, M.R., in 1825. It appeared that the testator had devised his real estates to trustees upon certain trusts therein specified and directed them to make and execute a settlement accordingly.

A suit was afterwards instituted to carry out the trusts of the will, and by the decree now sought to be reheard a reference was directed to the Master to approve of a settlement. It was now contended that this settlement was not in conformity with the trusts of the will, and it was sought to be rectified.

[*Cur. ad. vult.*]

The Court said that the decree could not be reheard until the petitioners had established their right under the will, and the petition was accordingly ordered to stand over for a bill to be filed for that purpose.

### Lord Chancellor.

*In re Dalton.* July 30, 1856.

### INFANTS' MARRIAGE SETTLEMENTS ACT—REFERENCE TO APPROVE OF SETTLEMENT—INQUIRY AS TO PROPRIETY OF MARRIAGE—WARD OF COURT.

Upon a petition by an infant under the 18 & 19 Vict. c. 43, s. 1, to approve of settlement upon

her marriage, held, reversing the decision of Vice-Chancellor Stuart, that such reference will not be directed to extend to inquire as to the propriety of the marriage,—such petition under the act not constituting the infant a ward of court.

THIS was an appeal from an order of the Vice-Chancellor Stuart (July 19th last), on a petition under the 18 & 19 Vic. c. 43, s. 1\*, to approve of a settlement upon the marriage of an infant, who was entitled on the death of her father, the tenant for life, to upwards of £15,000 consols, besides a sum of money on attaining the age of twenty-one years, so far as the reference to chambers to inquire whether the proposed marriage (which it appeared was with the father's consent) was a fit and proper one, having regard to the character and fortune of the intended husband, upon the ground (as the Vice-Chancellor held) that the effect of the order would be to make the infant a ward of court.

*Malins and Roxburgh* in support.

The Lord-Chancellor said the construction contended for by Mr. Malins, that an infant applying under the act did not thereby become a ward of court, was correct, and that this court could not prevent any marriage taking place without its consent, although it should be satisfied of the propriety of the settlement. The order of the Vice-Chancellor would therefore be varied in that respect.

### Master of the Rolls.

*Kell v. Charman.* July 26, 1856.

WILL—EXTRINSIC EVIDENCE AS TO MEANING OF SYMBOLS USED IN.

A testator, who was a jeweller, gave to his son William "the sum of i. x. x.," and to his son Robert Charles "the sum of o. x. x.": Held, that the evidence of his shopman was admissible to shew that there were private trade marks, and meant respectively £100 and £200.

A TESTATOR, who was a jeweller, gave his son William "the sum of i. x. x.," to his son Robert Charles "the sum of o. x. x.," and to his two daughters other legacies, about which there was no question.

The Master of the Rolls admitted the evidence of the testator's shopman, showing that these letters were the testator's private trade marks, and meant respectively £100 and £200.

*Lloyd, Palmer, Shapter, and Baggallay* for the respective parties.

\* Which enacts that "it shall be lawful for every infant, upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement, or contract for a settlement of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder or expectancy; and every conveyance, appointment, and assignment of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the said court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years; the sanction of the Court of Chancery to any such settlement or contract for a settlement may be given, upon petition presented by the infant or his or her guardian, in a summary way, without the institution of a suit; and if there be no guardian, the Court may require a guardian to be appointed or not, as it shall think fit" (s. 3).

### Vice-Chancellor Kindersley.

*Gay v. Picco.* August 4, 1856.

INJUNCTION—RESTRAINING PERFORMANCE OF MUSICIAN—ASSIGNMENT OF ORIGINAL CONTRACT.

The defendant contracted to perform on a musical instrument for B. and P., who afterwards, without his consent or being made a party, assigned their contract to the plaintiff for certain considerations. An injunction was refused with costs to restrain the defendant from performing on his own account.

Denney appeared in support of this motion for an injunction to restrain the defendant, who was a blind pipe-player, from performing in public or private on his own account. It appeared that the plaintiff had in 1855 obtained an assignment of a contract, under which the defendant agreed to perform for Gaetano Bagarelli and Antonio Poletti, for the considerations therein mentioned, and that he had fitted up a house for the defendant in Hart-street, Bloomsbury, which, however, he left in June last with Poletti, and had since performed on his own account.

*Selwyn and G. M. Gifford* for the defendant.

The Vice-Chancellor said the question was whether a man who had agreed to render his services to one person could be bound by a transfer of such services from his employer to another person. The original contract was with the defendant, to provide for his care and maintenance, and that his brother should accompany him. The assignment was with the consent, not of Picco, but of Poletti, who obliged himself that the defendant should perform for the benefit of the plaintiff and of himself, and follow him wherever he should think expedient to go. There was no contract between the plaintiff and the defendant—he was neither a party, nor was his consent asked to the contract made. The defendant, however, also swore that he had never been informed of it, and looked upon the plaintiff as the treasurer only of the concern. The injunction would, therefore, be refused, with costs.

### Vice-Chancellor Wood.

*In re Skidder.* July 26, 1856.

TRUSTEE ACT, 1850—VESTING ORDER IN MORTGAGEE'S EXECUTORS, WHERE HEIR OUT OF JURISDICTION.

A mortgagee, who was in receipt of the rents of the mortgaged property, died, having appointed executors, to whom she gave and devised her real and personal estate in trust for sale, but omitting to devise her trust or mortgage estates. Her heir-at-law was in New Zealand. A vesting order was made of the legal estate in the trustees in their petition under the 13 & 14 Vict. c. 60, s. 9.

Selwyn and Fordham appeared in support of this petition under the 13 & 14 Vict. c. 60, s. 9,\* for as order to vest in the petitioners, the executors of a mortgagee, the legal estate in a mortgaged estate upon her heir-at-law being in New Zealand. It appeared that the testatrix had been in receipt of the rents of the mortgaged property, but had omitted by her will to devise her trust or mortgage estates, although she had given and devised all her real and personal estate to them upon trust for sale.

The Vice-Chancellor made the order as asked.

\* Which enacts that "when any person solely seised or possessed of any lands upon any trust shall be out of the jurisdiction of the Court of Chancery or cannot be found, it shall be lawful for the said court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, AUGUST 16, 1856.

### THE SETTLED ESTATES ACT.

THE object of this statute is to empower the Court of Chancery to authorise leases and sales of settled estates, where such leases and sales shall be deemed proper and consistent with a due regard to the interests of all parties entitled under the settlement, will, or other instrument by virtue of which any *hereditaments* are limited in trust by way of succession.

The following conditions are to be observed in the execution of the act, with regard to granting leases:—

First, every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term of years not exceeding for an agricultural or occupation lease twenty-one years, for a mining lease, or a lease of water, water mills, way-leaves, waterleaves, or other rights or easements, forty years, and for a building lease ninety-nine years, or where the court shall be satisfied that it is the usual custom of the district and beneficial to the inheritance to grant building leases for longer terms, then for such term as the court shall direct.

Secondly, on every such lease shall be reserved the best rent, or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener, without taking any fine or other benefit in the nature of a fine.

Thirdly, where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned, namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate, or by virtue of any declaration in the settlement, is entitled to work such earth, coal, stone, or mineral for his own benefit, one fourth part of such rent, and otherwise three fourth parts thereof; and in every such lease sufficient provision shall be made to ensure such application of the aforesaid portion of the rent, by the appointment of trustees or otherwise, as the court shall deem expedient.

Fourthly, no such lease shall authorise the felling of any trees, except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorised by the lease.

Fifthly, every such lease shall be by deed, and the lessee shall execute a counterpart thereof;

and every such lease shall contain a condition for re-entry on nonpayment of the rent for a period not less than twenty-eight days after it becomes due.

The leases may be required to contain such special covenants as the court shall deem expedient.

The court may itself determine the form of particular leases, or vest the power in trustees.

Tenants for life may grant leases for twenty-one years, provided the best rent be reserved that can reasonably be obtained, without fine or other benefit in the nature of a fine.

On these applications, *evidence* is to be produced to enable the court to determine the conditions on which leases may be authorised.

The court may also authorise the *sale* of the whole or part of settled estates or of timber. Such sales to be conducted and confirmed according to the rules and practice of the court. Minerals may be excepted from the sale.

The *mode of proceeding* to exercise the powers conferred by the act is to be by *petition*, in a *summary way*. And the court may make general rules and orders for the regulation of the practice, which rules and orders are to be laid before Parliament.

Consents to the application are required from the following parties:—

Where there is a tenant in tail under the settlement in existence, and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail then the first of such tenants in tail, and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail.

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

The petition may be granted without consent, saving the rights of non-consenting parties; but notice of the application is to be served on all the trustees, and inserted in such newspapers as the court may direct.



But no application can be made under the act, where a similar application has been rejected by Parliament.

Notice of the exercise of the powers of the act is to be entered on the settlement, under the direction of the court.

The court may appoint trustees to receive and apply the monies arising from sales for the following purposes:—

The purchase or redemption of the land tax, or the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

The payment to any person becoming absolutely entitled.

Until the money can be so applied, the parties entitled to the rents of the land are to receive the dividends.

The court is not to authorise any act which would not have been authorised by the settlor.

The court may direct the costs and expenses of these applications to be charged on the estate in respect of which the application is made, or any other estate included in the settlement, or may direct a sale or mortgage of sufficient to pay the costs, or may direct the same to be paid out of the rents.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COUNTY COURTS ACTS AMENDMENT.

19 & 20 Vict. c. 108.

1. Commencement of act.
2. Enactments in schedule (A) repealed.
3. This act and 9 & 10 Vict. c. 95, 12 & 13 Vict. c. 101, 13 & 14 Vict. c. 61, and 15 & 16 Vict. c. 54 to be construed together.
4. This act and those above recited to apply to debts sued for under 18 & 19 Vict. c. 67.
5. Time and mode of certain proceedings to be regulated by rules of practice.
6. Qualification of deputy judge.
7. Where a court cannot be held proceedings to stand adjourned.
8. Clerk to be called registrar.
9. Registrar of more than one court to cease to be the registrar of all but one of such courts.
10. Compensation to registrars.
11. Deputy of judge to continue to act after death of judge till a new one is appointed; remuneration to deputy judge.
12. Deputy of registrar to continue to act after death or removal of registrar; remuneration to deputy registrars.
13. Judge to appoint deputy; registrar provisionally if one has not been appointed; remuneration to deputy registrar.

14. Assistant bailiffs to continue to act after removal of high bailiff; remuneration to bailiffs.
15. Power to registrar to issue summons against defendants residing out of jurisdiction of court.
16. On death, &c. of high bailiff, judge to appoint provisionally a deputy; remuneration to such deputy.
17. Summons may be served or process executed within 500 yards of district, &c.
18. Districts of the courts in the metropolis to be treated as one district for certain purposes.
19. Where judge of county court can sue and be sued.
20. If officer of court be plaintiff in his own court, defendant may remove the cause to an adjoining district.
21. Where officer of county court may be sued.
22. Power to judge to change venue.
23. If parties agree, county court shall have power to try certain causes, although the matter be beyond its jurisdiction.
24. Where claim reduced by set-off to £50, court to have jurisdiction.
25. Where title shall come in question, court, with consent of parties at trial, may decide the claim.
26. In certain cases judge of superior court may order cause to be tried in county court.
27. No action in county court on judgment of superior court.
28. If liquidated demand exceed £20, plaintiff may require defendant to give notice of intention to defend, on pain of judgment by default.
29. If notice to defend be given, action shall be tried; registrar to inform plaintiff if notice has or has not been given.
30. In certain cases of judgment by default, costs may be recovered.
31. Judge may issue warrant for bringing up a prisoner to give evidence.
32. Rules, &c. for regulating practice of county courts, and forms of proceedings, to be framed by judges appointed by Lord Chancellor.
33. Scale of costs to be allowed to attorneys in certain proceedings in county courts to be framed by the judges.
34. Costs of attorney in certain proceedings in county courts shall be taxed by registrar as between party and party.
35. Costs of attorney in certain proceedings in county courts may be taxed by registrar as between attorney and client.
36. Costs between attorney and client.
37. Till new scale of costs, and rules, and orders, and forms, made, former practice to continue.
38. Certiorari may be granted in certain cases, at discretion of judge of superior court, on security given.

39. In certain cases defendant may object to cause being tried in the county court.
40. Rule or summons to show cause why a writ of certiorari or prohibition should not issue, to be a stay of proceedings.
41. Notice of writ of certiorari or prohibition having been obtained to be sent to registrar.
42. Application for writ of prohibition to a judge shall be finally disposed of by rule or order.
43. Rule or order substituted for writ of mandamus to a judge or officer of a county court.
44. Refusal of writ of certiorari or prohibition or of rule or order in the nature of a mandamus by one court or judge to be final.
45. Where judgment does not exceed £20, judge may order payment by instalments; in other cases consent of plaintiffs necessary.
46. Priority of executions issuing out of county court.
47. Priority of executions issuing out of superior court and county court.
48. Summons for commitment may, by leave of court, issue in court in which judgment was obtained.
49. Judgment may be removed if there are no goods to be taken under it.
50. Possession of small tenements may be recovered in county courts by landlords where term has expired or been determined by notice.
51. In plaint for recovery of possession plaintiff may claim for rent and mesne profits.
52. Possession of small tenements may be recovered in county court by landlords for non-payment of rent.
53. Sub-tenant served with summons to recover possession must give notice to his immediate landlord, who may come in and defend.
54. In plaints to recover possession of premises, how summonses may be served.
55. Warrants to high bailiffs sufficient to justify them for entering on premises.
56. Such warrants to be in force for three months from the day named for delivering possession.
57. As to amendment of defects and errors of proceedings, &c.
58. Before whom affidavits may be sworn.
59. Warrants of commitment, how long to be in force.
60. No officer or party shall be deemed a trespasser by reason of irregularity.
61. Judgment summonses and warrants of commitment sufficient, if in form given in schedule.
62. Bankruptcy and insolvency of plaintiff not to cause action to abate, if assignees elect to continue it.
63. Registrar to grant replevins.
64. Replevins to be granted, on securities given.
65. Replevins may be commenced in superior courts.
66. Conditions of security to be given in such cases; conditions of security to be given when replevin brought in county court.
67. Replevins shall, at instance of defendant, be removed into superior court by certiorari, in certain cases.
68. Appeal in actions of replevin, and proceedings in interpleader, and for recovery of tenements.
69. Parties may agree not to appeal.
70. How securities under county court acts to be given and enforced.
71. Where security is required to be given, a deposit of money may be made in lieu thereof.
72. Claimant of goods taken in execution must deposit their values or pay costs of keeping possession, otherwise goods shall be sold.
73. Acknowledgments by married women under 3 & 4 W. 4, c. 74, to be received by judge.
74. When debtors prison of county is distant from a court, the nearest debtors prison of adjoining court may, by order of a Secretary of State, be used.
75. When goods seized under process of county court, landlord may claim certain rent in arrear.
76. Removal of bonds from registry of common pleas.
77. Compensations to officers of hundred court of wirral in the county of Chester.
78. Fees specified in schedule to be taken, and table of fees to be exhibited in court and registrar's office.
79. Treasury to regulate fees to be taken in county courts.
80. Salaries of judges to be paid out of consolidated fund; travelling expenses out of monies voted.
81. Salaries of the judges.
82. Registrars to be paid by salaries, as herein mentioned.
83. High bailiffs to be paid partly by salaries and partly by fees.
84. Salaries of registrars and high bailiffs to be paid out of fees.
85. Expense of building, &c. to be paid out of monies to be provided by Parliament.
86. Provisions relating to superior courts, to apply to Court of Common Pleas at Lancaster and Court of Pleas at Durham; proviso as to certiorari.

The following are the title, preamble, and sections of the act:—

An Act to amend the Acts relating to the County Courts. [29th July, 1856.]

WHEREAS it is expedient to amend and extend the provisions of the acts relating to the county courts established by the act passed in the session of Parliament holden in the ninth and tenth years of the reign of her present Majesty, chapter ninety-five: Be it enacted by the Queen's most excellent Majesty,

by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The provisions of this act shall come into operation on the first day of *October*, in the year of our Lord one thousand eight hundred and fifty-six, except the provisions relating to framing a scale of costs and making rules and orders of practice and forms of proceeding which shall come into operation on the passing of this act.

2. The several enactments specified in schedule A to this act are hereby repealed, except as to acts done under them.\*

3. This act and the acts passed in the sessions of Parliament holden in the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, in the twelfth and thirteenth years of the reign of her present Majesty, chapter one hundred and one,

\* The enactments contained in the 9 & 10 Vic. c. 95, which are now repealed, are as follow:—

Sect. 37. Fees to be taken according to schedule D, and tables to be exhibited in conspicuous places.

Fees may be reduced.

Appropriation of surplus fees.

52. A general fund to be raised for paying off money borrowed.

92. Court may make orders for payment by instalments.

107. As to the liability of goods taken in execution under 8 Anne, c. 77.

Landlords may claim certain rents in arrear.

Balliffs making levies may distrain for rent and costs.

In case of replevin.

131. How actions of replevin may be removed.

132. Possession of small tenements may be recovered by plaint in county court.

If tenant, &c., neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same.

133. The manner in which such summons shall be served.

136. How execution of warrant of possession may be stayed.

137. Proceedings on the bond for staying warrant of possession, &c.

139. Provision for the protection of officers of the court.

So much of section 103 as enacts that "no protection order or certificate granted by any court of bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment" under the order of a judge.

So much of section 143 as applies to the word "Agent."

The act also repeals the 6th section of 12 & 13 Vic. c. 101, whereby power was given to the Secretary of State, with consent of the Treasury, to alter the fees payable on proceedings in the county courts.

The following sections in the 13 & 14 Vic. c. 61, are repealed, namely:—

5. Fees to be taken according to schedule.

Power to Secretary of State, with consent of the Treasury, to alter fees.

6. Fees to be taken by barristers and attorneys.

7. Power of paying judges' clerks and high bailiffs, by salary instead of fees, given to the Lords of the Treasury and the Secretary of State.

17. In certain cases, on agreement of the parties, court shall have power to try causes, although the matters are beyond its jurisdiction.

20. So much of 9 & 10 Vic. c. 95, as requires a landlord, where rent is in arrear for premises wherein goods have been taken in execution, to state in writing the terms of holding, &c., repealed.

To entitle landlord to benefit under recited act it shall be sufficient to state the amount of rent claimed, &c.

21. Enactments of recited act as altered by this act as to certain claims of landlords to extend to goods taken in execution.

23. Before whom affidavits may be sworn.

The 1st section of the 15 & 16 Vic. c. 54, by which the Lord Chancellor was authorised to appoint five judges of the county courts to frame a scale of fees to be submitted to judges of superior courts for approval, is repealed; and also the provision as to the taxation of costs by clerk of court, subject to review.

The 1st section of the 17 & 18 Vic. c. 16, is also repealed, extending the right of appeal under the 13 & 14 Vic. c. 61.

in the thirteenth and fourteenth years of the reign of her present Majesty, chapter sixty-one, and in the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-four, shall be read and construed as one act, as if the several provisions in the said recited acts contained, not inconsistent with the provisions of this act, were repeated and re-enacted in this act.

4. The provisions of this act and of the recited acts which apply to any debt not exceeding twenty pounds shall apply to such debt or any part thereof, although the same shall be secured by or claimed upon bill of exchange or promissory note, and notwithstanding the statute of the eighteenth and nineteenth years of the reign of her present Majesty, chapter sixty-seven.

5. Where the time within which or where the mode in which any proceeding should be taken in the county court is not prescribed either in this act or in any act relating to the county courts, such time and mode shall be appointed by the rules of practice, orders, and forms to be made as hereinafter provided.

6. Any person hereafter to be appointed a deputy to the judge of a county court shall be a barrister-at-law of seven years standing, or shall have practised as a barrister and special pleader for at least seven years, or shall be a judge of a county court.

7. Where by reason of the death or unavoidable absence of the judge a county court cannot be held, the registrar, or in the event of his unavoidable absence, the high bailiff, shall adjourn the court to such day as he may deem convenient, and enter in the minute book the cause of such adjournment.

8. The clerk of a county court shall hereafter be called the registrar of the court, and henceforth no person shall be appointed registrar of more than one court.

9. From and after the first day of *October* one thousand eight hundred and fifty-six, a registrar of more than one county court shall cease to be the registrar of all of the courts of which he is the registrar, except of that court of which he may by writing addressed to the judge of such court have elected to remain the registrar: Provided always, that this provision shall not apply to any registrar who was clerk to any court mentioned in schedule (A.) or (B.) to the act passed in the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, unless such registrar shall, by writing addressed to the judge of such courts, have signified his desire that it should apply to him.

10. Every person who shall, under the provisions of the last section, cease to be the registrar of one or more county courts, shall be entitled to receive, as compensation for the loss sustained by him thereby, an annuity equal to one-fourth of the yearly amount of the fees received in such court or courts for the use of the registrar, calculated on an average of the five years ended the 31st day of December 1855, and the commissioners of her Majesty's Treasury are hereby empowered to award in each case such annuity, and to direct payment of the same to be made out of any monies to be provided by Parliament for that purpose: Provided always, that where any such registrar shall have been the clerk of any court mentioned in the schedule (A.) or (B.) to the act passed in the ninth and tenth years of the reign of her Majesty, chapter ninety-five, compensation may be awarded to him according to the provisions of section thirty-eight of the said act.

11. The appointment of a deputy of a judge of a county court, whether such deputy shall have been

appointed by the judge or by the Lord Chancellor, or by the Chancellor of the Duchy of Lancaster, shall not be vacated by the death of the judge, but his acts done after such death shall be as valid as if the judge had not died, and he shall continue to act in all the courts of the district of which the deceased was judge until the Lord Chancellor, or, where the whole of such district is within the Duchy of Lancaster, until the Chancellor of that duchy shall otherwise order, or a successor to such judge shall be appointed; and such deputy shall receive as remuneration for the period that he may act as deputy, after the death of the judge, such sum as the Lord Chancellor shall direct, or if the successor of the deceased judge be appointed by the Chancellor of the Duchy of Lancaster, then as the said Chancellor of the Duchy shall direct, and such sum shall be deducted from the salary and travelling allowance of the judge appointed to succeed the deceased judge; and the provisions of this section shall apply to all acts done by any deputy prior to the commencement of this act.

12. The appointment of a deputy of a registrar shall not be vacated by the death or removal of the registrar, but his acts done after such death or removal shall be as valid as if the registrar had not died or been removed, and he shall continue to act until a successor to such registrar shall be appointed; and he shall receive as remuneration for his services during the period he may so act after the death or removal of the registrar a rateable proportion of the salary attached to the office of registrar.

13. On the death or removal of a registrar who shall not have appointed a deputy the judge may, for a period not exceeding three months, provisionally appoint a person to discharge the duties of registrar; and such person shall act as and have all the rights and liabilities of a registrar until a permanent successor shall be appointed; and shall receive as remuneration for his services during the period he may so act a rateable proportion of the salary attached to the office of registrar.

14. The appointment of the bailiffs who are appointed to assist the high bailiff shall not be vacated by the death or removal of the high bailiff, but their acts done after such death or removal shall be as valid as if the high bailiff had not died or been removed, and had authorised such acts, and they shall continue to act until they shall be dismissed by the successor of the high bailiff or by the judge; and they shall be paid for their services during the period they shall so act after the death or removal of the high bailiff the same wages as they were receiving at the date of such death or removal, and such wages shall be paid out of the salary and allowance attached to the office of high bailiff.

15. The registrar of any county court may issue a summons against any defendant residing out of the jurisdiction of such court, at any time, upon the application of any plaintiff who will depose before such registrar that his cause of action has arisen within the jurisdiction of such court, in like manner as any judge of any county court has now power to issue any such summons.

16. On the death or removal of a high bailiff the judge may, for a period not exceeding three months, provisionally appoint a person to discharge the duties of high bailiff; and such person shall act as and have all the rights and liabilities of a high bailiff until a permanent successor shall be appointed, and shall receive as remuneration for his services during the period he shall so act a rateable pro-

portion of the salary and allowances attached to the office of high bailiff.

17. A summons may be served, or a warrant executed, within five hundred yards of the boundary of the district of the county court from which the same issued by the bailiff of such court, or, by order of the judge of such court, by such bailiff within the district of any other court.

18. Where a plaintiff shall dwell or carry on business in the district of the Bloomsbury county court of Middlesex, or in the district of the Brompton county court of Middlesex, or in the district of the Clerkenwell county court of Middlesex, or in the district of the Lambeth county court of Surrey, or in the district of the Marylebone county court of Middlesex, or in the district of the Shoreditch county court of Middlesex, or in the district of the Southwark county court of Surrey, or in the district of the Westminster county court of Middlesex, or in the district of the Whitechapel county court of Middlesex, and the defendant shall dwell or carry on business in the district of any of the said courts, the summons may issue and be served either in the district in which the plaintiff shall dwell or carry on business, or in the district in which the defendant shall dwell or carry on business.

19. A judge proposing to sue any person dwelling or carrying on business in any district of which he is the judge may bring his action in the county court of any adjoining district of which he is not the judge; and any person proposing to sue a judge may bring his action in any county court of a district adjoining the district of which the defendant is judge.

20. If an action be brought by an officer of a county court in the court of which he is an officer, except in case of the registrar suing as official assignee, the judge shall, at the request of the defendant, order that the venue be changed, and that the cause be sent for hearing to the court of some convenient district of which he is not the judge; and the registrar of the first-mentioned court shall forthwith transmit by post to the registrar of such last-mentioned court a certified copy of the plaint as entered in the plaint book, the duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the venue as entered in the minute book; and the judge of such last-mentioned court shall appoint a day for the hearing, notice whereof shall be sent by post or otherwise by the registrar of such last-mentioned court to both parties.

21. If an action be brought against an officer of a county court, the summons may issue in the district of which he is an officer, or in any adjoining district the judge of which is not the judge of a court of which the defendant is an officer.

22. If a judge of a county court shall be satisfied by either party to a cause pending in his court that such cause can be more conveniently or fairly tried in some other county court, he shall order that the venue be changed, and that the cause be sent for hearing to such other county court, or, if the judge shall be interested in the matter of any cause pending in his court, he shall order that the venue be changed, and that the cause be sent for hearing to some convenient county court of which he is not the judge, at his discretion; and in either case the registrar of the court in which the plaint was entered shall forthwith transmit by post to the registrar of the court to which the cause is to be sent a certified copy of the plaint, as entered in the plaint book, the

duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the venue, and the judge of such last-mentioned court shall appoint a day for the hearing, notice whereof shall be sent by post or otherwise by the registrar to both parties.

23. The county courts shall not have jurisdiction to try any action for criminal conversation; but with respect to all other actions, which may be brought in any superior court of common law, if both parties shall agree by a memorandum signed by them or their respective attorneys that any county court named in such memorandum shall have power to try such action, such county court shall have jurisdiction to try the same.

24. Where in an action the debt or demand claimed consists of a balance not exceeding fifty pounds, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action.

25. In an action in the county court in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise shall incidentally come in question, the judge shall have power to decide the claim which it is the immediate object of the action to enforce, if both parties at the hearing shall consent in any writing signed by them or their attorneys to the judge having such power; but the judgment of the court shall not be evidence of title between the parties or their privies in any other action in that court or in any proceeding in any other court; and such consent shall not prejudice or affect any right of appeal of either of the parties to such first-mentioned action.

26. Where in any action of contract brought in a superior court the claim indorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, a judge of a superior court, on the application of either party, after issue joined, may, in his discretion, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name, and thereupon the plaintiff shall lodge with the registrar of such court such order and the issue; and the judge of such court shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys; and after such hearing the registrar shall certify the result to the master's office of such superior court, and judgment in accordance with such certificate may be signed in such superior court.

27. No action shall be brought in a county court on any judgment of a superior court.

28. In any action in a county court for a debt or liquidated money demand exceeding twenty pounds, the plaintiff may, at his option, cause to be issued either a summons in the ordinary form, or a summons in the form or to the effect given in schedule (B.) to this act numbered (1); provided that if such last-mentioned summons be issued it shall be personally served on the defendant twelve clear days before the return day thereof, and then if the defendant shall not at least six clear days before such return day give notice in writing, signed by himself, his attorney or agent, to the registrar, of his intention to defend, the plaintiff may, on or within one month after such return day, without giving any proof of his claim, have judgment entered up against the defendant for the amount of his claim and costs,

such costs to be taxed by the registrar; and the order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments, if any, as the plaintiff or his attorney or agent shall in writing have consented to take at the time of the entry of the plaint.

29. If the defendant shall give such notice as in the last preceding section is specified, the action shall be heard in the ordinary course; but in any event the registrar shall, immediately after the last day for giving such notice, send a letter to the plaintiff by post, stating therein whether the defendant has or has not been served with such summons, and whether he has or has not given notice of his intention to defend.

30. Where an action of contract is brought in one of her Majesty's superior courts of record to recover a sum not exceeding twenty pounds, and the defendant in the action suffers judgment by default, the plaintiff shall recover no costs, unless upon an application to such court or to a judge of one of the superior courts such court or judge shall otherwise direct.

31. A judge of a county court, in any case where he shall see fit, upon application on affidavit by either party, may issue an order under his hand and the seal of the court for bringing up before such court any prisoner or person confined in any jail, prison, or place, under any sentence or under commitment for trial or otherwise, except under process in any civil action, suit, or proceeding, to be examined as a witness in any cause or matter depending, or to be inquired of or determined in or before such court; and the person required by any such warrant or order to be brought before such court shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of habeas corpus awarded by any of her Majesty's superior courts of law at Westminster to be brought before such court to be examined as a witness in any cause or matter depending before such court, is now by law required to be dealt with: Provided always, that the person having the custody of such prisoner or person shall not be bound to obey such order, unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers, and of the prisoner or person in going to, remaining at, and returning from such county court.

32. The Lord Chancellor may appoint five county court judges, and from time to time fill up any vacancies in their number, to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, and from time to time to amend such rules, orders, and forms; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same; and the rules, orders, and forms or amended rules, orders, and forms, so allowed or altered, shall, from a day to be named by the Lord Chancellor, be in force in every county court.

33. With respect to proceedings in the county courts, in actions where the debt or damage claimed exceeds twenty pounds, the five county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to

the Lord Chancellor, who may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every county court.

34. With respect to such proceedings as are specified in the last preceding section, all costs and charges between party and party shall be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge of the court, on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force.

35. With respect to such proceedings as are last herein-before specified, all costs and charges between attorney and client shall, on the application either of the attorney or client, but not otherwise, be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge of the court, on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force, unless the registrar shall be satisfied that the client has agreed in writing to pay them, in which case they may be allowed; and no attorney shall have a right to recover from his client any costs or charges in respect of such proceedings, unless they shall have been allowed, either on such taxation, or on the taxation of a master of a superior court of common law or of the Court of Chancery.

36. Where in any action the debt or damage claimed shall not exceed twenty pounds, an attorney shall not be entitled to recover from his client any further costs or charges in the conduct of such suit than those mentioned in the ninety-first section of the Act of the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, unless upon taxation of costs the registrar be satisfied, by writing under the hand of the client, that he has agreed to pay further costs or charges; and in such case the registrar may allow any costs or charges not exceeding the amount which may have been so agreed to be paid.

37. Until the scale of costs and charges, and the rules, orders, and forms mentioned herein, shall respectively be in force, the scale of costs and charges, and the rules, orders, and forms, respectively in operation in the county courts at the time of passing this act, so far as the same are not inconsistent with this act, shall continue in force.

38. Any action commenced in a county court for a claim not exceeding five pounds may be removed by writ of certiorari into a superior court, if such superior court or a judge of a superior court shall deem it desirable that the cause shall be tried in such superior court; and if the party applying for such writ shall give security, to be approved by one of the masters of such superior court, for the amount of the claim, and the costs of the trial, not exceeding in all one hundred pounds, and shall further assent to such terms, if any, as the superior court or judge shall think fit to impose.

39. If in any action of contract the plaintiff shall claim a sum exceeding twenty pounds, or if in any action of tort the plaintiff shall claim a sum exceeding five pounds, and the defendant shall give notice that he objects to the action being tried in the county court, and shall give security, to be approved of by the registrar, for the amount claimed, and the costs of trial in one of the superior courts of common

law, not exceeding in the whole the sum of one hundred and fifty pounds, all proceedings in the county court in any such action shall be stayed; but if in any such action the defendant do not object to the same being tried by the county court, or shall fail to give the security aforesaid, the county court shall dispose of the cause in the usual way; and the entry of the plaint in such action shall be a sufficient commencement of the suit to prevent the operation of any statute of limitation applicable to such claim: provided that nothing herein contained shall prevent the removal of any cause from a county court by writ of certiorari in the cases and subject to the conditions in and subject to which such cause may now be removed.

40. The granting by any of the superior courts or by any judge thereof of a rule or summons to show cause why a writ of certiorari or prohibition should not issue to a county court, shall, if the superior court or a judge thereof so direct, operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons, or until such superior court or judge shall otherwise order; and the judge of the county court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such order be made; but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the registrar of the county court two clear days before the day fixed for the hearing of the cause, the judge of the county court may, in his discretion, order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs.

41. Where a writ of certiorari or of prohibition addressed to a judge of a county court shall have been granted by a superior court or a judge thereof, on an *ex parte* application, and the party who obtained it shall not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for hearing the cause to which it shall relate, the judge of the county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs.

42. When an application shall be made to a superior court or a judge thereof for a writ of prohibition to be addressed to a judge of a county court, the matter shall be finally disposed of by the rule or order, and no declaration or further proceedings in prohibition shall be allowed.

43. No writ of mandamus shall henceforth issue to a judge or an officer of the county court for refusing to do any act relating to the duties of his office; but any party requiring such act to be done may apply to any superior court or a judge thereof, upon an affidavit of the facts, for a rule or summons calling upon such judge or officer of a county court, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such rule or summons good cause shall not be shown, the superior court or judge thereof may by rule or order direct the act to be done, and the judge or officer of the county court, upon being served with such rule or order, shall obey the same on pain of attachment; and in any event the superior court or the judge thereof may

make such order with respect to costs as to such court or judge shall seem fit.

44. When any superior court or a judge thereof shall have refused to grant a writ of certiorari or of prohibition to be addressed to a judge, or such rule or order as in the last preceding section is specified, no other superior court or judge thereof shall grant such writ or rule or order; but nothing herein shall affect the right of appealing from the decision of the judge of the superior court to the court itself, or prevent a second application being made for such writ or rule or order to the same superior court or a judge thereof on grounds different from those on which the first application was founded.

45. Where judgment has been obtained in a county court for a sum not exceeding twenty pounds, exclusive of costs, the judge may order such sum and the costs to be paid at such time or times, and by such instalments, if any, as he shall think fit, and all such monies shall be paid into court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith, or within fourteen clear days from the date of the judgment, unless the plaintiff or his counsel, attorney, or agent, will consent that the same shall be paid by instalments, in which case the judge shall order the same to be paid at such time or times, and by such instalments, if any, as shall be consented to, and all such monies, whether payable in one sum or by instalments, shall be paid into court.

46. The precise time when any application shall be made to a registrar to issue a warrant against the goods of a party shall be entered by him in the execution book and on the warrant; and when more than one such warrant shall be delivered to the high bailiff to be executed he shall execute them in the order of the times so entered.

47. When a writ against the goods of a party has issued from a superior court, and a warrant against the goods of the same party has issued from a county court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application to the registrar for the issue of the warrant to be executed; and the sheriff, on demand, shall, by writing signed by any clerk in the office of the under sheriff, inform the high bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall show his warrant to any sheriff's officer, and such writing purporting to be so signed, and the endorsement on the warrant, shall respectively be sufficient justification to any high bailiff or sheriff acting thereon.

48. A judgment summons authorized by the ninety-eighth section of the act of the ninth and tenth years of the reign of her present majesty, chapter ninety-five, may, by leave of the judge, be obtained from the court in which judgment was obtained, although the judgment debtor shall not then dwell or carry on business within the district of such court, if the judge shall think fit, in the exercise of his discretion, to grant such leave.

49. If a judge of a superior court shall be satisfied that a party against whom judgment for an amount exceeding twenty pounds, exclusive of costs, has been obtained in a county court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may, if he shall think fit, and on such terms as to costs as he may direct, order a writ of certiorari to issue to remove the judgment of the county court into one of the superior courts, and when removed it shall have the same force and effect,

and the same proceedings may be had thereon, as in the case of a judgment of such superior court; but no action shall be brought upon such judgment.

50. When the term and interest of the tenant of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof shall have exceeded fifty pounds by the year, and upon which no fine or premium shall have been paid, shall have expired, or shall have been determined either by the landlord or the tenant by a legal notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a plaint at his option, either against such tenant or against such person so neglecting or refusing, in the county court of the district in which the premises lie for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing; and if the defendant shall not, at the time named in the summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the judge shall think fit to name; and if such order be not obeyed, the registrar, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorizing and requiring the high bailiff of the court to give possession of such premises to the plaintiff.

[To be continued.]

## PROCTORS IN ECCLESIASTICAL COURTS BILL.

### ALLOWANCE OF AGENCY FEES.

By the 53 Geo. 3, c. 127, s. 8, it is enacted "that if any proctor of the arches court of Canterbury, or any other ecclesiastical court or courts in which he shall be entitled to act as proctor, shall act as such, or permit or suffer his name to be in any manner used in any suit the prosecution or defence whereof shall appertain to the office of a proctor, or in obtaining probate of wills, letters of administration, or marriage licences, to or for or on account or for the profit and benefit of any person or persons not entitled to act as a proctor, or shall permit or suffer any such person or persons to demand or participate in such profit and benefit, and complaint thereof shall be made to the court or courts wherein such proctor hath been admitted and enrolled, and proof given to the satisfaction of the said court or courts that such proctor hath offended therein as aforesaid, then and in such case every such proctor so offending shall be *struck off the Roll of Proctors*, and be for ever after disabled from practising as a proctor, or be suspended from the office, function, and practice of a proctor in all and every the said court or courts for so long a period as the judge or judges of the said court or courts may deem fit; save and except as to any allowance or allowances, sum or sums of money, that are or shall be agreed to be made to the widows or children of any deceased proctor or proctors

By any surviving partner or partners of such-deceased proctor or proctors; and also save and except as to any agreement made or understood to be made between proctors and *articled clerks* whose articles have been executed prior to the passing of this act."

By a bill, introduced by Mr. Hadfield and Mr. R. J. Phillimore, shortly before the Prorogation of Parliament this 8th section is proposed to be repealed. The repeal would place the proctors and solicitors on the same footing as country attorneys, and their London agents.

We understand the proctors are opposed to the proposition.

## LAW OF ATTORNEYS AND SOLICITORS.

### SETTING ASIDE SECURITY FROM CLIENT TO HIS SOLICITOR FOR ESTIMATED AMOUNT OF PAST COSTS IN SUIT.

THIS was a bill to set aside four several securities from the plaintiff to his solicitor. A demurrer was allowed with reference to three of those securities, and the only one now in question was an indenture of mortgage dated in March, 1848, to secure the sum of £2,542 7s. 11d., with interest.

The Vice-Chancellor Wood said—

"I cannot regret that this case has been fully argued, and that I have twice had the advantage of hearing everything which it was possible to urge in support of the plaintiff's claim. Some of the propositions laid down by Lord St. Leonards, as Lord Chancellor of Ireland, in *Lawless v. Mansfield*, 1 Dr. and W. 557, were so broadly stated, and appeared so much at variance with what I had supposed to be the settled rule of the court, ever since Lord Cottenham's decision in *Waters v. Taylor*, 2 Myl. and C. 626, decided some three or four years previously,—while, at the same time, they proceeded from a judge of the highest eminence, who carefully considered the law he was laying down,—that I was anxious to have the principles of both decisions fully sifted and investigated. The result has been to confirm me in the conclusion that there is a broad difference between the principles of the decisions to which I have referred. Having come to that conclusion, it is not competent to me to say which of the learned judges I prefer to follow as an authority, since I am in fact bound by the authority of the one judge, and I am not bound by that of the other.

His Honour read the averments of the bill, and in so doing took special notice of the circumstance that, notwithstanding it appeared by the bill that long before the bill was filed, at a time when the plaintiff was opposed to the defendant in a suit of the most hostile nature, the plaintiff had caused all the accounts rendered to him by the defendant of his receipts and payments to be investigated, the bill did not aver a single specific instance of a fraudulent or improper charge in the bills of costs secured by the indenture of March, 1848, although it averred several of such instances in reference to the accounts for the other securities were given.

The Vice-Chancellor thus continued—

"In reference to attempts of this nature to set

aside securities given by a client to his solicitor, Lord Cottenham has laid down, with great clearness and precision, the ground on which all such attempts must rest: 'The attempt,' he says, in reference to that in *Waters v. Taylor*, 'was not supported by that which alone could give it any title to success, viz., allegation and proof of such dealings between the solicitor and the client, or of such errors and improper charges as could amount to evidence of fraud.' The plaintiff must shew one of two things: either fraudulent dealing on the part of the solicitor in the concoction and obtaining of the security; or else error, amounting to evidence of fraud, in the charges which are made the foundation of the security. One or other of these two things the plaintiff must allege and prove.

"In the present case, the plaintiff has attempted to shew improper dealing employed by the defendant in obtaining the security; but of fraud or error in the charges which were made the foundation of the security, there is not throughout the bill, notwithstanding many general allegations on the subject, any attempt to aver one single specific instance.

"He has attempted, however, to shew improper dealings in obtaining the instrument. He says, 1st, the defendant was his solicitor, acting as such in suits which were still pending when the security was given; 2ndly, that the defendant obtained the security by actual pressure, which, it was argued, is a ground on which Lord Cottenham agreed with Sir John Leach, that a security would be re-opened; 3rdly, he says he had no other legal adviser when the security was obtained, no draft of it was sent for his approval, he saw nothing but the engrossment, and the remainder was for bills of costs which had never been submitted in any way for his consideration.

"As to the first point, it is admitted that when the security was given, the defendant was acting as the plaintiff's solicitor in suits then pending. But that circumstance, taken alone, is not a sufficient ground for re-opening the transaction.

"As to the second point, the pressure, if any there was, was all exerted on the part of the plaintiff. The plaintiff, who of his own accord, and so far as the evidence shows, without any instigation or encouragement on the part of the defendant, was embarked in more than one chancery suit, appears to have been unusually active, and to have derived unusual satisfaction from superintending the litigation he had in hand and for some time previously, and up to the date of the security in question, his principal object appears to have been to have Mr. Westmacott removed from the management of his chancery business, and the whole of that business transferred exclusively to the defendant. While pressing the defendant to effect this purpose, he was told by the latter that Westmacott could not part with the papers until he was paid his bill of costs; and that for this purpose it would be necessary to have a mortgage executed. The letter in which he is told this can bear no higher construction; yet that letter is the only fragment of evidence laid hold of as affording a ground for the charge of pressure exerted on the part of the defendant. The allegation in the bill, that the defendant prevented the plaintiff from obtaining a certain annuity until the plaintiff had secured him his bill of costs, is utterly without proof.

"It was argued, in reference to a considerable advantage given to the plaintiff under this security, that if such advantage is to be regarded by the court, a solicitor may easily escape the consequences of any



improper transaction by giving some interest to his client. But I am at least at liberty to take such advantage into consideration in reference to the question of undue pressure. Here, so far from exerting any pressure on the plaintiff, the defendant was in fact allowing him a most unusual indulgence. One of the principal grounds for the profits allowed in a solicitor's bill, which appear considerable when viewed in the abstract, is the large amount of money out of pocket expended in carrying on a heavy business for his client. The defendant, nevertheless, by this indenture, consents to forego his right to sue the plaintiff for his bill of costs so long as Colonel Blagrove lives, and during that time contents himself with simple interest.

"As to the third point, there would be a great deal to say in this case, if it appeared in evidence that the defendant, a solicitor, in taking from his client this security, was in fact taking a security for a sum including the alleged amount of untaxed bills, as to which no communication had passed between himself and his client, nor any arrangement been entered into as to the delivery of bills of costs, by which that amount would be shewn to be due. But that was not the case. It is clear from the evidence (the bill is silent upon the whole matter), that before the plaintiff executed the security in question, the defendant submitted to him the estimate of what was then due to Westmacott and to himself, in round sums amounting together to the sum of £2,542 7s. 11d. It is clear that this sum of £2,542 7s. 11d. was agreed to by the plaintiff as an estimated charge, the defendant undertaking to furnish him in the long vacation with the bills of costs by which that charge would be made out—bills of costs for which the plaintiff's eagerness to transfer his business from Westmacott to Rowth, and with that view to have the security executed at once, prevented him from waiting. It is clear, that it was upon this footing that the plaintiff executed the security; and that in October, 1848, the bills were delivered by the defendant pursuant to his undertaking.

"Such being the footing upon which the security was executed, if the bills so delivered by the defendant had amounted in the whole to a sum less than the estimated sum for which the security was given, then the plaintiff (assuming him to have put the whole case fairly and openly upon his bill, instead of waiting, as he has done, to take the chance of being able at the hearing to produce some evidence which the defendant might not be able to answer) might have had the same relief as in *Coleman v. Mellersh*, 2 M'N. and G. 309. In that case there had been an estimate made of the bills, and a security taken for the amount of the estimate and the amount of the bills fell short of the amount of the estimate by £60. And the Lord Chancellor said, that as the defendant had represented the bill at £60 more than the actual amount, the very foundation of the mortgage failed, and the whole transaction must be re-opened. But the present case is the very reverse of *Coleman v. Mellersh*. With the exception of £10, a sum too trifling to notice, the estimate of Mr. Westmacott's bill appears to have been correct; while the defendant's charges, estimated at £735 5s. 6d., are shewn by the bills to have in fact amounted to £854.

"I have now examined all the evidence by which the plaintiff has attempted to shew improper dealing employed by the defendant in obtaining the security, and I have found that such evidence entirely fails.

That disposes of the first ground, upon which, according to Lord Cottenham, attempts of this nature must be supported. And as to the second ground, I have already observed, that throughout the whole of the plaintiff's bill there does not appear to be an attempt to aver one single specific instance of fraud or error in the charges which were made the foundation of the security in question. It remains to consider what is the rule of law as to the right of a client to have a security set aside under such circumstances.

"It is clear that where specific errors amounting to evidence of fraud in the charges which were made the foundation of the security are alleged and proved, the plaintiff is entitled to have the security set aside. But the proposition laid down by Lord St. Leonards in *Lawless v. Mansfield* goes a great deal further. He begins by stating the question. He says—'The question which has been most discussed in this case is, what should be the frame of a bill like the present cross bill, in which the transactions between a solicitor and his client are impeached as fraudulent, and accounts which were settled and for which securities had been given, are sought to be opened? To what extent charges, shewing specific errors in those accounts, ought to be inserted in order to open the accounts generally, and what is the liability of a solicitor to prove the items of his account irrespective of the bonds or bills or securities of that sort which he has taken? I shall inquire what the rule of the court is before I enter upon the consideration of the items alleged to be erroneous.' (I should mention that in *Lawless v. Mansfield* there was one item in one of the accounts alleged and proved to be improper; but the argument was, that, as to the other accounts, there was nothing alleged and proved.) 'In ordinary cases the rule seems to be that the establishment of one mistake is sufficient to induce the court to give a decree entitling the party to surcharge and falsify an account. That appears to have been admitted in *Davis v. Sparling*, which has been so much referred to throughout the argument. The report of that case is not very full; neither does it appear quite distinctly whether there were several accounts or but one. I therefore do not rely on the dicta there as going at all beyond the common rule, which, as I have already stated, is the right to a decree to surcharge and falsify where an error in an account is alleged and proved. Whether, in ordinary cases, where there are several distinct accounts, and errors are alleged and proved only in some of them, all are liable to be surcharged and falsified, does not appear to have been decided. Lord Eldon, in *Chambers v. Goldwin*, distinctly affirms the principle that in ordinary cases an error must be charged in the pleadings and proved at the hearing to entitle the party to have liberty to surcharge and falsify.' Then, after going through several cases upon that head, Lord St. Leonards says further—'No doubt the rule of this court would, in an ordinary case of a settled account', preclude the party from the relief which is here sought; but this is not the ordinary case; it is plainly distinguishable from it, and that on the ground that the accounts here are between parties who stood in the relation of solicitor and client, of agent and principal, of creditor and debtor; for Mr. Lawless stood in the relation of those three characters to the Messrs. Mansfield at the time the accounts were settled. Now, I take it that these two propositions are perfectly clear in law: 1st, that where the relation of attorney and client subsists in questions of accounts between the parties, the com-

mon rule does not prevail; though the party alleges generally that the accounts are erroneous, the court will make a decree opening the accounts, if sufficient cause is shewn; and 2nd, that a solicitor, to whom his client has given bonds or bills, cannot produce those securities and say, as a third person might, they prove the existence of his debt; but from the relationship in which the parties stood, and the alarm of this court, lest by means of such relationship any undue influence should have been exerted, the solicitor is bound, irrespective of his securities, to prove the debt for which those securities were given. This latter position has been disputed, but it is now perfectly settled.' Then he proceeds to say that he founds this opinion deliberately, having had occasion to consider all the authorities when he argued the case of *Morgan v. Lewes*, 1 Cl. and F. 169; 8 Bligh, 777, before the House of Lords, and adds—'That case, as to the pleadings, was a simple one; it was heard originally upon bill and answer; there was no proof of the errors specified in the bill, and the defendant did, in his answer, rely upon a settled account. The first decree was the ordinary one directing a general account. The case appears in several reports.' And he then goes through the opinions of all the judges, to shew that they established in his mind the law of the court to be that a general charge, like that in the case before him, was sufficient: and that as between a solicitor and his client, his accounts, though he may have securities, must be vouched, and the items in the account proved by accounts and evidence independently of the instruments.

"I was surprised to find that proposition, because it seems so entirely in conflict with the principle laid down by Lord Cottenham in *Waters v. Taylor*. In *Waters v. Taylor* the security was a security for costs, amounting altogether to £5,000, given while the suit was going on—taken by the solicitor from the client (although it is true there was a considerable delay in the case in attempting to dispute them), yet Lord Cottenham lays down this proposition most clearly. He says—'The case, indeed,' of *Waters v. Taylor*, 'differs from that of *Horlock v. Smith*, 2 Myl. and C. 495, in this—that the security was taken whilst the suits were depending.' (Mr. Rolt, in reply, called my attention to *Horlock v. Smith*, and distinguished that from the other cases, upon the ground that in that case there was no suit pending, and the securities were at an end. In *Waters v. Taylor* the security was taken as here whilst the suit was pending), 'and while the relation of solicitor and client continued. But so it was in *Cooke v. Schre*, 1 Ves. and B. 126; and in *Plenderleath v. Fraser*, 8 Ves. and B. 174, and *Gretton v. Leyburne*, T. and R. 407, the relation of attorney and client continued at the time of the settlement. No doubt, the settlement or payment of a solicitor's bills pending a suit, and whilst the relation continues, affords grounds upon which the accounts will be much more easily opened, and the bills referred for taxation, than in other cases; but if these circumstances alone were, in all cases, to be held sufficient ground for a taxation, no solicitor who continues to act for a client would be secure of any settlement during the life of his client; and the continuance of one of these suits which not unfrequently occur in this court, would prevent the possibility of any settlement between the solicitor and the client.' Fortunately, suits now do not often occur, and are not likely to occur, of such length as Lord Cottenham alludes to. The plaintiff, although he has been involved in five

chancery suits, has disposed of them in comparatively a short space of time. But he was involved in litigation, in which nobody could expect the defendant to make a large advance, or pledge himself to make further advances, without any settlement or security whatever. And what the defendant in effect did was this: having a client utterly insolvent, except as to this reversionary interest, he consented to postpone his claim for interest when about to make a large advance on his client's behalf.

"Such was the doctrine of Lord Cottenham in *Waters v. Taylor*—a doctrine extremely different from that laid down by Lord St. Leonards, who says, that the simple averment of erroneous accounts is enough in the case of a solicitor and client to open the whole, and that thereupon the solicitor must prove the amount of the debt.

"I have looked carefully to Lord St. Leonards' later view of *Morgan v. Lewes* in his *Treatise on the Law of Property as administered by the House of Lords*, page 576. The edition I have before me was published in 1849, two years later than the decision in *Lawless v. Mansfield*, and *Lawless v. Mansfield* is referred to in a note on the case of *Morgan v. Lewes*. Lord St. Leonards there says,—'In the case of *Morgan v. Lewes*, which it is impossible to refer to without regretting that the litigation had not been stopped at an earlier period, it was held that Morgan, having taken securities from Lewes, whose adviser, solicitor, and agent he was, for various sums of money, was bound to prove the advances by other evidence than the securities themselves or the accounts, and also that an attorney and agent is bound to keep regular accounts. The first rule (namely, of his being bound to prove the advances without any impeachment of them) was laid down generally, but in other passages it was qualified. Lord Redesdale said, that the settled accounts confuted themselves, so that they could not presume that any sums were advanced except such as appeared to have been so by receipts and evidence independent of the instruments; and Lord Eldon concluded by repeating that the record appeared to him to open and establish this principle, that where an attorney takes it upon him to take securities from his client *which do not express the real nature of the transaction*' (the italics are not mine, but Lord St. Leonards'), 'it is incumbent on him, by other evidence than the securities themselves, to prove what was the real nature of the transaction, and what sums were really advanced.'

"I conceive that the words marked with italics were meant to designate, not securities which do not express upon the face of them that they are given for bills of costs, but securities which falsely suggest that which was not the real nature of the transaction. The first proposition would go a great deal too far. The last does not apply to the present case. In this security I find a recital that the amount secured was due; and when the bills of costs are produced I find that they make up that amount, and £100 more; and that being so, I apprehend that the security does express the real nature of the transaction, so far as it is required to do so by any rule of this court. In *Waters v. Taylor*, the recital was simply that so much money was due, no mention being made of bills or costs. And then Lord Cottenham laid down what I apprehend to be the true rule of this court, viz., that, in the case of a solicitor, if, in seeking to set aside a security given him by his client, the plaintiff relies on pressure, undue influence, or other improper conduct employed by him in obtaining the

security, alighter evidence may be held sufficient than would be required in the case of a mere stranger; but the plaintiff, nevertheless, must aver and prove the improper conduct on which he relies; and, in like manner, if he relies on fraud, or error amounting to evidence of fraud, in the bill of costs in respect of which the security was given, he must aver and prove the specific items upon which he means to rely to be fraudulent or erroneous.

In the present case, as I have observed more than once already, I do not find throughout the whole of the plaintiff's bill one single specific item of the bill of costs averred to be either fraudulent or erroneous. So far as regards the charges in his bill of costs, there is nothing which the defendant comes here to meet; and if I am to apply Lord Cottenham's doctrine to any case, I am certainly to apply it to this, for I think there never was a case so circumstanced, and in which, if I re-opened the accounts, I should be dealing so unfairly with the defendant. Here, the plaintiff has given a security for an estimated amount, agreed by him to be due, upon the understanding that the defendant should deliver the bills of costs by a given time. Those bills are delivered in October, 1848, and within the given period. In August, 1852, the plaintiff changes his solicitor. In December, 1852, he applies to this court to have all the papers, vouchers, and documents in the defendant's possession relating to his affairs delivered up to him. He obtains an order for that purpose, and also for the taxation of all the defendant's bills of costs, except those included in the security now in question, and he obtains that order without prejudice to any question as to his rights in respect of the costs for which that security was given. How far that order left it open to him to assert his rights, as he attempts to assert them in the present suit, it is unnecessary to determine. It is clear that the least which could be expected of a person in the plaintiff's then position was, that having obtained such an order, and having procured the vouchers and documents relating to the bills of costs which he now disputes, he should as speedily as possible assert his right to have such costs taxed. Failing to do this, he would certainly leave the court to infer that, having the benefit of a security which relieved him from the liability of being charged with compound interest, he had determined to acquiesce in that security. He cannot be heard to say he was at liberty, in the position he occupied, to stand by as long as he pleased without asserting his rights. But the case does not stand there—a year and a half before this bill was filed he took upon himself the investigation of these accounts. If an exception is ever to be made, which I hope it will not, to the rule that a plaintiff must aver and prove the errors on which he relies, certainly that exception is not to be made in favour of one who has had the bills of costs in his possession for nearly eight years, who has been at arm's length with his solicitor for nearly four years, who admits that he investigated the bills of costs in a hostile suit in this court a year and a half since, and yet brings his case on to a hearing without an avowment of a single error, and then by affidavits filed at the last moment, when it is too late for the defendant to answer them, attempts to raise a charge of mistakes and misapprehensions. What equity can there be to relieve a party under such circumstances? What equity can there be to allow (which is all that I could wish any shadow of reason have been asked to allow) an inquiry whether accounts are correct, of which the plain-

tiff ought at least to have taken the pains to point out the incorrectness—an inquiry which, as Lord Cottenham expressed it, would be in effect deciding the whole case?

"It would still have been unsatisfactory to part with a case involving charges like the present, if it were possible to imagine that imposition of any kind had been really practised upon the plaintiff. But the court is relieved from any uneasiness on that score by the affidavits themselves. The utmost they make out is an overcharge of sums amounting to about £30. That circumstance unexplained would doubtless be unsatisfactory. But I am bound to bear in mind that the defendant has had no opportunity of explaining that circumstance; and on the part of the defendant I have this broad fact, that the amount of bills, as estimated, is less by upwards of £100 than the amount shewn to be due by the bills as delivered; and though I do not mean to lay down such a doctrine as that an improper charge may be made a matter of set-off, yet a comparison of these two sums does prove to me that the true reason why the plaintiff never relied before upon any of the statements now first put forth by his affidavits was, that he felt the uselessness of the attempt: he was conscious that, in the taxing-master's office, he would never strike off so much as was omitted in the sum for which he executed the security.

"That is the obvious conclusion; and I confess I never saw a case so unfairly presented to the court as the present has been on the part of the plaintiff, relying as it would seem upon the authority of the doctrine in *Lawless v. Mansfield*. I certainly cannot entertain any such doctrine as that on which he relies. I consider myself bound by Lord Cottenham's decision, to hold that it is not the law of this court.

"The bill offers no redemption. It simply attempts to set aside the security; and all that I can do is to dismiss the fragment which the demurrer has left, with costs."

*Blagrove v. Routh*, 2 Kay and J. 509.

## LAW OF COSTS.

WHERE DEBT EXCEEDING £20 REDUCED BY SET-OFF TO LESS THAN £20.

A SUIT was indorsed for £80, giving credit for £44, and claiming the balance, £36. The declaration was on the money counts, and the defendant pleaded (*inter alia*) never indebted, and set-off, upon which issue was joined. On the postea the finding of the jury was entered as to the first issue that the defendant was indebted in the sum of £24 12s., part of the claim within mentioned, and no further as therein alleged, and as to the fourth issue, that the plaintiff was not nor is indebted to an amount equal to the plaintiff's claim, as in the within fourth plea alleged, but only in the sum of £19 8s. 6d., which being set off against the said sum of £24 12s. leaves the sum of £4 14s. 7d. due to the plaintiff. And the said jurors assess the claim of the plaintiff within made, over and above his costs of suit, and the sum so set off, at the said sum of £4 14s. 7d.

The Master having taxed the plaintiff's costs on the higher scale, a rule was obtained to review his taxation.

Lord Campbell, C.J., said—"I am of opinion that the rule must be absolute, as the Master in this case should have taxed the plaintiff's costs in the manner provided for by Rule 8 of the Directions to the Masters of the Courts, Reg. Gen. Hil. 16 Vict. The questions

depend upon the construction of that rule, which has the force of an Act of Parliament. I think that in the natural grammatical meaning of the words, the plaintiff in this case has recovered £4 14s. 7d. only. He proved that he had a claim to more; but the defendant proved a cross-claim; and the judgment is only for the balance, which is what in ordinary language was recovered. Then is there anything in the context or subject-matter to prevent our giving their ordinary and grammatical signification to the words of the rule? On the contrary, it is perfectly just and convenient that the costs should be made to depend upon the actual balance recovered. Had the set-off overtopped the demand, the defendant would have had the costs of the cause against the plaintiff; as it is, the defendant has to pay those costs, but on the lower scale. Then on the authorities: the cases of the County Courts Acts have been satisfactorily distinguished; and on the other side we have the opinion of Parke, B. in *Parker v. Serie*, 6 Dowl. P. C. 384.

*Tongue v. Chadwick*, 5 Ellis and B. 950.

### PROFESSIONAL LIFE INSURANCE COMPANIES.

ESTABLISHING these institutions to be of the first importance to professional men, whose incomes depend upon their health, and ability to conduct their business, we are glad to report the prosperous state of the Law Insurance Societies. We select for the present the three following; and it may be observed that by the 19 & 20 Vict. c. 38, the right to deduct from the income tax the amount of premium paid on life insurance is continued, see p. 188, *ante*.

#### LAW LIFE.

The following important changes have been recently made in the plan of this insurance society.

The society now assures any sum not exceeding £10,000 on any one life or lives.

The divisions of profit will hereafter be made at the end of every fifth year, instead of every seventh year, as heretofore.

The next division will be made up to the 31st December, 1859, when all then existing policies for the whole term of life, of two years' standing and upwards, will participate.

The reversionary bonuses may be surrendered in consideration of either a cash payment or a reduction of the future annual premiums.

Loans are granted on the security of the unencumbered policies of the society, nearly to the extent of their surrender value.

No charge is made for policy stamps.

The limits within which parties whose lives are assured, are permitted to reside, have been considerably extended.

Notices of assignment of policies are received and registered; and when notice is given on the office form (which may be had on application) its receipt will be acknowledged.

As the assets of the society amount to nearly four and a half millions, and the annual income to upwards of four hundred and fifty thousand pounds, the simplest security is afforded to assurers.

#### LEGAL AND GENERAL.

The recent improvements in this society are:—

All stamps on policies are paid by the society.

All medical fees are paid by the society.

Two-fifths of the premium on a policy, effected for the term of life, may remain unpaid for five years as a debt on the policy, thus enabling persons to assure a large amount at a smaller immediate payment.

Loans, to the amount of the office value of policies, made to the holders on security of their policies; thus obviating, in many instances, the necessity of sacrificing their interest by a sale.

#### LONDON AND PROVINCIAL.

In obedience to the provisions of the deed of settlement the board of directors have called an extraordinary meeting, for the purpose of declaring the results of their investigation into the society's affairs, and of dividing the surplus profits realized during the first ten years of the society's operations.

From the commencement of business in 1846, the society has granted assurances for sums amounting to £877,098, and the sum received for premiums during the above period has amounted to £184,812 11s. 7d. In addition to the above, the sum of £8,662 17s. 5d. has been received for the consideration money for annuities granted.

The number of policies in force on the 31st December, 1855, was 664, insuring £614,926, and yielding annual premiums (exclusive of extra premiums for foreign residence), amounting to £20,068 15s. 1d.

The total amount actually paid in claims has been £20,866 17s. 3d., which will be increased to £27,100 by the addition of claims admitted and in course of payment. This amount is very much below what, according to the office tables, might have been anticipated.

The realised assets of the society on the 31st December, 1855, were £157,083 6s. 7d., calculating the investments at cost price.

In order to determine the amount of profit to be divided, a most careful valuation of the assets and liabilities of the society has been made by the actuary. This valuation met the entire approbation of the board, but in a matter of so much importance it was thought better that the whole calculations should be submitted to some other independent gentleman of eminence in his profession; and the directors laid all the papers before Mr. Brown, the actuary to the Guardian Assurance Company, who carefully revised and checked Mr. Day's calculations, and considered the principles on which they were founded.

The directors have much satisfaction in stating that the calculations of their actuary have in all respects been confirmed by Mr. Brown, whose report is annexed.

The rate of interest adopted is 8 per cent. only, and the rate of mortality on which the calculations are based, is that deduced from the experience of the Equitable Society, upon a modification of which the society's premiums have been founded.

The sum which the directors recommend should be reserved, in respect of the society's liabilities under existing contracts, is £86,718 10s. 6d. Among the liabilities are included, £6,200 for claim allowed, and £501 1s. 9d. for sundry accounts due from the society on the 31st December, 1855.

In making this reserve, the directors have taken into consideration the increased rate of mortality which must hereafter be anticipated, in consequence of the very small amount of claims hitherto made.

Should the recommendations of the directors be

approved by the meeting, the surplus profit to be divided will be £29,208 5s. 8d.

One-fifth of this, viz., £5,841 13s. 2d., pursuant to the Deed of Settlement, will be carried to the credit of the proprietors' fund, which amounted, on the 31st December last, to £61,161 10s. 5d., and will be thereby increased to £67,003 3s. 7d.; the result will be an addition of £1 12s. 6d. per share, so that each share will be henceforth treated as amounting to £3 12s. 6d. paid up.

The income of this fund will enable the directors to declare a yearly dividend until the next division of 3s. per share (free from income tax) or at the rate of 7½ per cent. upon the original paid up capital.

The remaining four-fifths of the divisible surplus, viz., £23,366 12s. 6d., belong to the assured, and represent a reversionary sum of £43,020, in which form, pursuant to the deed, the bonus upon each policy will be declared. The reversionary bonus will average very nearly £2 per cent. per annum on the sum assured, and 46 per cent. on the premiums paid.

These reversionary bonuses may, if preferred, be commuted for an equivalent cash payment, or for a reduction of future premiums.

The directors believe that both the proprietors and the assured will now reap the full benefit of the careful and prudent manner in which the operations of the society have been carried on. During the ten years which have just expired the society was debarred from declaring any bonus in favour of the assured, or paying any dividend on the paid up capital to the shareholders. The directors could hold out no inducements beyond those offered by the sound principles on which their operations were based, and doubtless in these times of competition the society attracted less attention than, under different circumstances, might have been reasonably expected. It is believed that the full benefit of the past will be found in the future. The proprietors will henceforth receive an ample rate of interest on their capital, and the assured may calculate on a liberal addition to their policies on each periodical division, and policies which shall become claims in the intermediate period (having been in existence not less than two years) will have a proportionate share. It is hoped that the shareholders and the assured, as well as the public, will see—in the economical management—the small amount of claims—the reserve kept back—the amount of realised capital—the responsibility of the shareholders—and the profits hitherto made—a guarantee for the future stability and prosperity of the society, which now offers advantages which can be surpassed by few (if any) of the oldest offices.

## LETTERS ON LEGAL ETHICS.

### PRIVILEGED COMMUNICATIONS.—FRAUD.

ALTHOUGH an attorney, as an officer of the superior courts, is bound in performing his duty to his client, to adhere strictly to the rules of practice, and not to "abuse the process of the court;" he is also bound by his oath, and by the very nature of the retainer he has accepted, faithfully to keep the secrets of his client, and to preserve from exposure the papers and documents entrusted to his care and custody.

I remember a case which occurred many years ago, wherein at first it might appear that a conflict of duty existed between the interests of the client

and those of public justice. In the progress of the trial a document was offered in evidence upon which after close investigation, a doubt arose of its genuineness.

In cases of this kind, there may be a question for the jury to decide whether the signature of the party is sufficiently proved; different witnesses may express an opinion for or against the hand-writing with more or less of positiveness, but there may be no imputation expressed or even hinted of actual fraud. Again, a letter may have been received by the post, apparently written by the person signing, or by his authority, containing a statement or admission direct or implied, of a fact in question. If the letter be fictitious, there has been not only the offence of forgery committed, but some means of detection afforded. Supposing the letter to have been posted from a distant town, the perpetrator must have travelled there for the purpose of posting it, or have confided the letter to some other person, and there is the probability that he or his agent may be traced.

Supposing such a document to be in the hands of an officer of the court, and a direct charge of forgery made, the court would order the paper to be impounded, and the attorney who produced it could not take any step to re-possess it. But in the case I refer to, after suspicion had been excited, but before any explicit imputation of forgery was made, or any interference of the court, the document came again into the attorney's hands. Was he bound to leave it on the table of the court until the cause was over, and so afford an opportunity for its being impounded, or was he entitled to resume the possession of it? Of course, if it had never been produced in court, though the attorney in the progress of the trial might have reason to suspect its fabrication, it would have been a breach of confidence to bring it forward.

The document in question, true or false, came into his hands, and he immediately put it in his bag. I do not recollect whether the judge was asked to order its deposit with the clerk of *Nisi Prius*, but from that day it was never seen. It does not appear whether the attorney delivered it back to his client or not. The client lost his cause, and the opposite party seems to have been satisfied with his civil victory, and instituted no criminal proceedings.

It may be added that at the time of the occurrence the punishment of death always followed a conviction for forgery.

If an application had been made to the judge to order the attorney to deliver the disputed paper to the officer of the court, would he have been privileged on account of his professional position in withholding it? If his client had made any statement in confidence, the disclosure of which would have been prejudicial, it is clear the attorney would be protected for the sake of his client. Would this rule apply to documentary evidence, and enable him to retain it?

ATTORNATUS.

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

The Lord Chancellor, on the recommendation of the Earl of Clarendon, has appointed *Herbert Ingram, Esq.*, to be one of the magistrates for the county of Hertford.

Mr. *Edward John Cobby*, solicitor, has been

appointed to the vacant clerkship in the registrar's office of the Court of Chancery.

#### INSOLVENT DEBTORS' COURT.

The court will sit on the 27th inst. for bail cases and motions. At this sitting parties in prison who can be bailed will be enabled to obtain their liberty until the sittings in September.

#### COMMITTEE OF COUNTY COURT JUDGES—NEW RULES AND SCALE OF COSTS.

The Lord Chancellor, under the provisions of the last county courts act, has, appointed Mr. Serjeant Manning, Mr. Koe, Mr. Cooke, Mr. Worledge, and Mr. Farnor, five of the judges of the county courts, a committee for framing rules of practice and regulating the costs of attorneys in the county courts, and has appointed Mr. Henry Nicol their secretary.

We regret to hear that Mr. Serjeant Dowling, one of the former commissioners, is abroad on account of ill health.

#### LONDON LAW AGENT FOR THE LIVERPOOL CORPORATION.

It is stated in the *Civil Service Gazette* "that the Town Council of Liverpool have decided to appoint an agent, whose salary shall not exceed £600 a year, to reside permanently in London, to transact the corporation common law and Chancery business under the direction of the town clerk. A great saving is expected to result from this appointment."

We presume this London agent will be an attorney and solicitor, duly admitted in the superior courts of law and equity, and annually taking out his certificate. The Solicitor of the Inland Revenue and some other Government solicitors take out their annual certificates, although they are not legally required to do so, neither is the solicitor of the city of London; but the town of Liverpool is not so favoured. If an unqualified person be appointed "to transact the corporation common law and Chancery business," he will be liable to a penalty of £50 for each proceeding in law or equity, or for drawing or preparing any conveyance of or deed relating to any real or personal property.\*

\* 44 Geo. 3, c. 98, s. 14.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Manby v. Bawicke.* July 14, 1856.

#### EQUITY JURISDICTION IMPROVEMENT ACT—CROSS-EXAMINATION ON AFFIDAVIT FILED UNDER s. 18.

Held, reversing the decision of Vice-Chancellor Wood, that the plaintiff was not entitled to cross-examine the defendants under the 15 & 16 Vict. c. 86, s. 40, upon their affidavit, which he had required to be filed under s. 18, notwithstanding they had put in an answer setting forth in the schedule the documents in their possession.

THIS was an appeal from an order of the Vice-Chancellor Wood for the cross-examination, under the 15 & 16 Vict. c. 68, s. 40, of the defendants on their affidavit, which the plaintiff had required to be filed under s. 18,\* notwithstanding they had put in an answer setting forth in the schedule the documents in their possession.

By s. 40 it is enacted that "any party in any cause or matter depending in the said court may, by a writ of subpoena *ad testificandum* or *duces tecum*, require the attendance of any witness before an examiner of the said court, or before an examiner

specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used in any claim, motion, petition, or other proceeding before the court shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined: provided always, that the court always has a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case."

*Cairns* and *Toller* in support; *Rozburgh* and *C. L. Webb* contra, citing *Kay v. Smith*, 20 Beav. 566; 50 Leg. Obs. 270 (L. J.).

The *Lords Justices* said that the affidavit was made at the plaintiff's instance, and not voluntarily by the defendants. The section meant that a party should not have the benefit of an affidavit without making himself liable to cross-examination on it, although if he gave notice to use it he would be liable to be cross-examined. The affidavit was not made to be used upon any claim, motion, petition, or other proceeding before the court within the meaning of the section, and the appeal must therefore be allowed.

### Master of the Rolls.

*Hopwood v. Hopwood.* July 24, 1856.

#### LEGACY—ADEMPTION—RECITAL IN CODICIL AS SUGGESTING AND FURTHER GIFT.

A testator gave portions of £5,000 to his three children. Upon his daughter's marriage he

\* Which enacts that "it shall be lawful for the court, upon the application of the plaintiff in any suit in the said court, whether commenced by bill or by claim, and as to a suit commenced by bill, whether the defendant may or may not have been required to answer the bill, or may or may not have been interrogated as to the possession of documents, to make an order for the production by any defendant, upon oath, of such of the documents in his possession or power relating to matters in question in the suit, as the court shall think right; and the court may deal with such documents, when produced, in such manner as shall appear just."

settled £2,000 on her, and by a codicil revoked the gift to her of the £5,000, and gave her £3,000. His son F. then married, and the testator covenanted to pay £5,000 to the trustees of his settlement within twelve months of his death. By a second codicil, dated about fifteen years afterwards, the testator recited the gifts of £5,000 in his will to his sons, and gave them £7,000 each in addition, and he confirmed his will and previous codicil. By a third codicil he recited that he had given his other son H. £5,000, and directed it should be in satisfaction of the legacy of that amount in his will to him, but he confirmed his will and previous codicils in other respects; Held, that the legacy of £5,000 to F. was not adeemed by the covenant in the settlement of that amount.

THE testator by his will directed sums of £5,000 each, to be raised by his trustees out of certain property by sale or mortgage, for his sons Frank and Harvey, and his daughter. Upon the subsequent marriage of such daughter with Lord Sefton the testator settled on her £2,000, and by a codicil to his will revoked her legacy of £5,000, reciting such settlement, and gave her £3,000. Afterwards his son Frank married Lady Eleanor Stanley, and the testator covenanted to pay the sum of £5,000 to the trustees of his settlement within twelve months after his death, with interest in the meantime. By a second codicil, dated about fifteen years after such marriage, the testator, after reciting the former gifts to his sons of £5,000 each, directed his trustees to raise two further sums of £7,000 each, to be held on the same trusts, and to be applied in the same manner as directed by his will of the £5,000, and he thereby confirmed his will and previous codicil. By a third codicil the testator recited that he had raised £5,000 for his son Harvey since the date of his will, and directed that it should be in satisfaction of the legacy to him of £5,000 in the will, and he confirmed in other respects his will and codicils. The question was now raised whether the legacy in the will to the testator's son Frank was not adeemed by the subsequent settlement of that amount on his marriage.

*Solicitor-General, Roupell, and Karslake* for the plaintiff.

The *Master of the Rolls* (without calling on *R. Palmer and Little* for the defendant) said that by the various alterations which the testator had made from time to time in his will, it appeared at first sight that he intended the sum given under the settlement should be in satisfaction of the gift under the will. But upon looking at the codicil made subsequently to the marriage of Mr. Frank Hopwood, he distinctly stated the gift by the will of £5,000, and his intention of leaving him a still further sum. If he had intended that the sum given under the settlement should satisfy the gift by the will, the testator would have expressed himself to that effect. He had not, however done this, but had clearly signified a contrary intention by referring to the gift under the will as a subsisting one. The legacy was accordingly not adeemed, and the son was entitled to both legacies.

### Vice-Chancellor Kindersley.

*In re Brass's Trust.* July 18, 1866.

TRUSTEE ACT, 1850—VESTING ORDER IN TWO REMAINING TRUSTEES AND CESTUI QUE TRUST.

Held, that the 18 and 14 Vict. c. 60, ss. 20, 22, do

not authorise a vesting order of mortgage debts, and the right to transfer shares in a banking company to the two trustees (the third being out of the jurisdiction) remaining in the jurisdiction, and the party solely beneficially entitled.

*Higgins* appeared in support of this petition, on behalf of the person solely entitled to the beneficial interest in certain mortgage debts and shares in a banking company, for a vesting order of the same in the two trustees remaining in England and himself. It appeared that the third trustee was out of the jurisdiction.

By the 18 and 14 Vict. c. 60, s. 20, it is enacted that "in every case where the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, shall under the provisions of this act be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of the governor and company of the Bank of England or of any other company or society established or to be established, it shall also be lawful for the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, if it be deemed more convenient, to make an order directing the secretary, deputy secretary, or accountant-general, for the time being of the governor and company of the Bank of England, or any officer of such other company or society, to cause to transfer or join in transferring the stock to the person or persons to be named in the order."

Section 22 enacts that "where any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividend or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons the said court may appoint."

The *Vice-Chancellor* said that the sections did not authorise the vesting order to the two trustees and the petitioner, and the petition was accordingly refused.

### Vice-Chancellor Wood.

*Read v. Barton.* July 30, 1866.

MOTION FOR SUBSTITUTED SERVICE—COSTS OF SOLICITOR SERVED WITH NOTICE.

*A plaintiff served notice of motion to substitute service against one of the defendants upon his solicitor. On the solicitor appearing, held, that the plaintiff was liable for his costs, as the application was ex parte, and not upon notice.*

THIS was a motion to substitute service against one of the defendants in the above suit, and it appeared that notice of the motion had been served on his solicitor.

*W. H. Terrell* in support; *Harrison*, for the solicitor, asked for his costs.

The *Vice-Chancellor*, in making the order to substitute service, said the application should have been *ex parte*, and that the plaintiff must therefore pay the costs of the solicitor.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, AUGUST 23, 1856.

### MEMOIR OF BRYAN HOLME, ESQ.

THE life of a lawyer, though engaged in the higher branch of the profession, rarely affords more than a few materials for the pen of the biographer, unless the subject of the memoir should have passed from the professional to the political, from the province of the forum to that of the senate. It may, indeed, be that, like an Erskine, Lyndhurst, Brougham, or Truro, the successful advocate may be retained in important public trials, or causes of great commercial, social, or domestic interest, and thus his natural talent, his laborious attainments, his energy, skill, perseverance, and eloquence may furnish themes for interesting description and critical comments. Advocates who have distinguished themselves in the usual routine of professional business before both judges and jury, and have been selected by the Prime Minister for the several offices of Attorney and Solicitor General, and finally for the chief seats on the Bench, become objects of historical consideration; and their early struggles, their successful exertions, and the several stages of their progress, furnish topics for the graphic power of the most eminent biographers, as we have seen in our own day. But to such high distinction the vast majority of our learned friends at the Bar cannot aspire. Their names, indeed, may be familiar to the numerous class of law reporters, their acuteness as special pleaders, and their tact and skill may be esteemed by their clients, the attorneys; but they soar not into the regions of public fame and celebrity.

If such be the case with the advocate who lives and moves in open Court in the presence of a numerous Bar, a large part of the public, and the general body of attorneys, what shall we say when we come to descant on the second branch of the profession, and view the ordinary career of a Solicitor? However eminent in character, or extensively engaged in practice, his professional life is marked with still fewer events and incidents requiring to be recorded for the information of his brethren, or the gratification of his family connections or personal friends.

This, however, may be remarked, that although the attorney pursues "the noiseless tenor of his way," his vocation is often as interesting, both to the feelings and the intellect,

as that of the highest branches of any profession, or those who are engaged in affairs that concern the public welfare. An eminent attorney holds a position as highly confidential as that of a clergyman or a physician. He is called upon to advise the noblest in the land; to consider not only their immediate personal interests, but the interests of their families; to provide against the folly and extravagance both of youth and age; to repair the neglect of the careless, and to preserve the honour and possessions of ancient families. But the facts and circumstances connected with these interesting, important, and complicated transactions, can never be disclosed; they are strictly private, and are never hinted even to the most confidential or intimate relation or friend. The secrets of clients are as sacred to the solicitor as the confessions of the penitent to the pastor or the priest. Neither can the correspondence, which forms a large part of the memoirs of a public man, be consulted in recording the incidents of the life of an attorney. The client relies in undoubting confidence that his communications to his solicitor, and the letters he receives from him, are hermetically sealed from observation or disclosure.

We will not undertake to say whether Mr. Warren and Mr. Dickens have accurately described the several grades of the legal profession—whether, on the one hand, Mr. Runnington and Mr. Tulkinghorn are the true types of the highest class of solicitors—or, on the other, whether Messrs. Quirk, Gammon, and Snap and Messrs. Dodson and Fogg faithfully represent the opposite class of practitioners. These imaginary characters are ingeniously introduced to work out the scenes in which they appear, and sufficiently illustrate the services which can be performed by no other than the able and confidential "family solicitor" in the one case, or the "sharp practitioner" in the other. Scant justice is done by these and other authors to the integrity and honour, the sagacity, firmness, and unwearied labours of the attorney and solicitor.

Consider for a moment the vast power for good or ill which is unavoidably placed in the hands of an attorney. Say that he has a complicated family arrangement to effect, conflicting interests to adjust; to make good past misfortune, and provide for the present and



the future. His personal interest may best comport with the institution of a costly and long-continuing chancery suit, or with the multiplication of elaborate and special deeds and documents, protracted negotiations, and frequent journeys; the objects to be attained may be indefinitely delayed by the forms of equity procedure, and the necessity of bringing numerous parties before the court. By untiring exertion, by a conciliating spirit, and enormous labour, he effects an arrangement which saves the parties from many years of litigation, and places them in early possession of their several rights. For these invaluable services he receives the ordinary professional allowances, superadded to the feeling of having conscientiously performed his duty; but he acquires no fame, like the successful advocate. The difficulties he has overcome, and the means by which he has achieved success, must remain unknown, for perchance the disclosure would reflect no credit on the actions or motives of his client.

We have felt justified in thus dwelling upon the general character and conduct of solicitors, and particularly of those engaged in extensive and respectable practice, because the subject of our memoir belonged to that class, and the present appeared to afford a favourable opportunity for rendering some measure of justice to its merits and integrity.

We may observe, also, that it is rarely the good fortune of the members of any profession to distinguish themselves by conferring great and permanent advantages on the general body to which they belong. Men of enormous wealth may, without inconvenience and without labour, make munificent gifts or bequests, and justly receive high honours for their generosity; but those who devote a large portion of their busy lives to devising and carrying into effect important plans of improvement for the lasting benefit of their profession, are entitled to a still higher place in the general esteem of their brethren.

To this distinction the late Mr. Bryan Holme has an undoubted claim. He it was who first projected "The Law Institution;" and being at the head of the long-established and eminent firm of Holme, Frampton, and Loftus, his personal influence and popular manners enabled him soon to associate a considerable number of subscribers in support of his plan. The first prospectus set forth, amongst other inducements, the following:—

"To those members of the profession who are old enough to remember the time when the attorneys resident in the city, and distant parts of the town, used to frequent Peele's, Joe's, Brown's, Symond's Inn, and other coffee-houses in the neighbourhood of the inns of court, in the evenings, for the purposes of business, the utility of the present plan will at once be obvious; but to the younger branches of the profession, who have not had the benefit of that experience, it may be proper to point out a few of the leading advantages that will result from it.

"As most solicitors have daily occasion to resort

to the inns of court on business, they will, by the proposed plan, be enabled, at the same time, to meet other solicitors with whom they may have business to transact, instead of going to their offices, often at a considerable distance, and always at the risk of not meeting with them at home. It will also enable a solicitor who has occasion to attend the courts, the judges' chambers, the master's offices, consultations of counsel, or other appointments in the neighbourhood, to pass his time here, both usefully and agreeably, until his attendance becomes necessary.

"In another point of view, too, very beneficial consequences may be expected to result from the establishment; by bringing the profession in friendly contact with each other, it will promote liberal practice, check disreputable conduct, and soften the personal hostility which the very nature of the profession is too apt to produce.

"It will also induce articulated clerks, by honourable conduct during their clerkships, to render themselves worthy of becoming members, and of participating in the advantages of the institution when they become attorneys."

It was proposed to raise a fund in shares of £25 each, and erect an "Attorney's Hall" in Chancery-lane, with a library, club room, and offices. The prospectus comprised estimates and various suggestions for carrying the plan into effect, showing that all the details had been well considered and judiciously arranged.

We have seen a collection of the several editions of the prospectus, which were from time to time issued until a sufficient number of subscribers was obtained. In March, 1825, a meeting was convened at Serle's Coffee House, and a committee appointed to settle a plan to be submitted to a general meeting which was convened for the 2nd June in Furnival's Inn Hall. The society, under the name of "The Law Institution," was then formed, a committee of management appointed, and measures adopted for raising the necessary funds.

Some of the leading members of the profession contributed no less than £500 each, a considerable number £250, others £100, and so on down to £25. A deed of settlement was executed in 1827, the first and largest portion of land was purchased in 1828 from Mr. Jervis, Q.C. (the father of the present Chief Justice), a royal charter was obtained in 1831,\* and the building was opened in 1832. In 1833, three courses of lectures were established on subjects of common law, equity, and conveyancing; in 1836, the examination of articulated clerks was instituted, at the suggestion of the society, and the examiners selected by the judges from the committee of management. In 1843 was passed the Attorneys' and Solicitors' Act, under which the society was appointed Registrar of Attorneys.† In 1845 a new charter was granted on the re-  
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\* The society is indebted to Mr. Tooke for obtaining the charter, when Lord Brougham was Chancellor, and Sir Thomas (afterwards Lord) Denman was Attorney-General.

† This act was prepared by the committee under the directions of the late Lord Langdale.

acquisition of the shares in the property of the society, the constitution of which as a joint stock company was merged into one of a collegiate character, called "The Incorporated Law Society," consisting of a president, vice-president, council, and members, admitted on payment of a fee formerly of £15 and now of £5. Each member of the Law Institution surrendered a share as his qualification, about two-thirds of the members presented the society with their extra shares, and the rest were purchased. So that now there is no private or individual interest in the property of the corporate body.

About twenty years ago a subscription was made by the members of the society for the purpose of providing a whole length portrait of Mr. Holme, and an admirable likeness was painted by Mr. Pickersgill, R.A., and placed at one end of the hall of the society; and opposite to him is a portrait, by the same eminent artist, of Lord Chancellor Truro, who, in the early years of his professional life, practised as an attorney in the City of London.

Having thus narrated this distinguished event in Mr. Holme's life, we proceed to notice what may be termed his professional antecedents. There is considerable interest attached to the history, as it were, of many of the well-known firms in London, the pedigrees of some of which stretch back 150 years. The earliest notices we have of Mr. Holme's predecessors are as follows:—

The first firm appears to have been that of Heaton and Venables,\* of Hatton-court, Threadneedle-street; afterwards Venables, Buggin, and Bleasdale; then Bleasdale and Alexander; then Bleasdale, Alexander, and Holme; then Bleasdale, Lowless, and Crosse.

Mr. Venables retired in 1792, and received an annuity from the business, and went to live at Wood-hill, near Oswestry, in Shropshire, where he died in January, 1818. His eldest son is a provincial barrister at Liverpool, and another son an archdeacon. Mr. Buggin, being a man of fortune, retired from business in the year 1796, and was knighted.† Mr. Bleasdale died in November, 1831, at Tatham, a parish twelve miles beyond Lancaster. Mr. Alexander died in 1823, at Axminster, where he was buried.

Messrs. Bleasdale, Alexander, and Holme had two offices, one in Hatton-court, already mentioned, where Mr. Bleasdale officiated, and one in New Inn, where Mr. Alexander and Mr. Holme attended. In 1816, Mr. Bleasdale wishing to retire, it was agreed that he should take the City business to himself. Messrs. Lowless and Crosse joined him in

partnership, and he withdrew two or three years afterwards. Messrs. Alexander and Holme continued in New Inn until 1821, when the former retired, and Mr. Frampton and Mr. Loftus became partners, the firm being then Holme, Frampton, and Loftus; and on Mr. Frampton's death, in 1836, Mr. Young joined the firm.

We must now advert to the more personal history of Mr. Holme. He was baptised on the 29th December, 1776, at Tunstall, in Lancashire, and was descended from an old and respectable family, his father being a landed proprietor of some extent. He is described in the parish register as the son of William and Elizabeth Holme, of Thurland Castle; he was educated in the neighbouring town of Wray. He entered the profession of the law in 1793, about which year he was articled to Mr. John Baldwin, a solicitor at Lancaster. There his active and intelligent mind rapidly acquired a knowledge of the general principles of the law, and of many of the details of professional practice. He was admitted on the Roll in Hilary Term, 1800, and it would seem that he intended to practise at Lancaster, for he obtained the usual commissions from the superior courts of law for taking affidavits in Lancashire and the neighbouring counties, dated the 31st August, 1802, in which he is described as of Lancaster. Soon after this time he proceeded to the metropolis, where so many of our northern brethren have attained distinction. He was admitted into the office of Messrs. Bleasdale and Alexander. By that energetic application to business for which he was always remarkable, he soon mastered the technicalities of practice, and the forms of procedure in the courts, and particularly the department of Chancery, in which he took his station for several years as one of the managing clerks of Messrs. Bleasdale and Alexander, who ranked in the first class of agency offices. He became a partner in the firm in the year 1806. His perseverance and talent had here ample scope, and he became one of the ablest practitioners of his time, and highly esteemed by all his professional brethren. In those days, the hours of attendance at an attorney's office were much longer than of late. Business commenced at 9 o'clock, and, with the interval of the dinner time from 4 to 6, generally continued till 9 at night. Indeed, a large part of the business of the law was done in the evening. The Rolls Court sat from 6 o'clock till 10. A judge of each of the three common law courts sat in chambers in Serjeant's Inn at half-past 6, to hear summonses on questions of practice and pleading, and generally remained till 9 o'clock. The active partner of a firm like Bleasdale, Alexander, and Holme, was sure to be at his post, and the discipline of the office was kept up in full efficiency. Mr. Holme was married at St. George's, Bloomsbury, on the 31st August, 1807, to Miss Anne Simpson, one of the

\* Mr. Venables was previously of Lincoln's Inn.

† Sir George Buggin married a relative of Sir George Tappe, which was the occasion of his being knighted. On her death, Sir George Buggin married Lady Cecilia Gore, daughter of the Earl of Arran, and had a house in Great Cumberland-place, and another at Tonbridge Wells. He died in April, 1823. Her ladyship was afterwards privately married to the Duke of Sussex, and subsequently created Duchess of Inverness during Lord Melbourne's administration.

daughters of Mr. Samuel Simpson, a ship-owner and merchant at Lancaster, and a member of one of the oldest and most respected firms of that town, which, at that period, was a rival of Liverpool in trade and commerce.

Mr. Holme was not only an able lawyer, but found time to enter largely into the fields of literature. His stores of general knowledge were extensive, and his classical attainments considerable. He particularly delighted in old and curious books, of which he had a large collection; but his constant occupations in business interrupted the pursuit of his favorite studies, and prevented the adoption of any systematic course of reading, and he often regretted that he had not time to arrange his books, and prepare a catalogue of them. They were strewed about in various rooms at home and at chambers. He was familiar with many of the old booksellers and collectors, and passed much time in looking over their stores. Mr. Holme was also a large contributor to the library of the Incorporated Law Society, particularly in the department of county history and topography, in which he took great interest.

Looking at the preceding dates, it will be seen that Mr. Holme had been in practice upwards of fifty years. He enjoyed excellent health, with occasional interruptions of lumbago in the winter, and probably his life might have been considerably prolonged had he adopted the usual habit of the profession, to leave town during the long vacation, if not at other seasons. For several years, however, his excursions extended only from New Inn to his residence in Brunswick-square. This was principally, if not entirely, owing to the state of his wife's health, who, we understand, has been unable to leave the house for many years. For some time past, Mr. Holme naturally felt some of the infirmities of age, and for several months required a carriage to take him to and from his chambers; and at length he was reluctantly compelled to remain at home. His appetite failed, and his physical powers during the last six weeks of his life gradually declined. He died in his 80th year, early on Tuesday morning, the 15th July, and was buried at Kensal-green Cemetery.\* His wife survives him, and to her he left all his property. The certified cause of death was "decay of nature and disease of the

heart." It has been reported that he died very rich, as might naturally have been supposed in the case of a person, like himself, in large practice, and of inexpensive domestic habits; but this, we understand, is a mistake. The amount of his property will probably not exceed £25,000.

With the character of Mr. Holme as a member of the profession, and in his intercourse in society, many of our readers are well acquainted. To his younger brethren he was invariably kind and affable; and all must admit the fairness and urbanity with which he always met his professional opponents. Many of his unfortunate brethren whom he assisted in their adversity will deplore his loss; and for them, in the latter years of his life, he meditated an honourable retreat. He devoted considerable time in the vacation of 1864 to the details of a plan for establishing a benevolent institution for the relief of aged and indigent attorneys, who indeed had long excited his commiseration. In the latter part of that year a prospectus was circulated amongst the London profession, and the names of upwards of three hundred subscribers were published in the *Legal Observer*. Mr. Holme's declining health and energy prevented the meeting of the members of the provisional committee, who had agreed to support the proposal: next term, we hope, another chairman will be selected, and the plan carried into effect.

In considering the character, intellectual and moral, of the subject of our memoir, we avail ourselves of some papers with which we have been entrusted. Some years ago, namely, in June, 1836, Mr. Holme was induced, from curiosity, to submit his head to the manipulation of the celebrated Mr. De Ville, and the development of the several organs were noted down by that skillful phrenologist. Having seen these notes, and Mr. Holme's remarks, we extract the substance of some of them.

It was predicated by the phrenologist that Mr. Holme possessed a *capacity for intellectual occupation*. On which he observes:—

"I don't know whether I possess this faculty; but I do know that I have a great craving after intellectual occupation, and that it is the *only real pleasure* which I enjoy, and that the want of opportunity of indulging it is a great source of uneasiness to me."

Then it was said he possessed the faculty of *much contrivance with combination and arrangement*. His acknowledgment is thus expressed:—

"I verily and in my conscience believe that I possess this faculty to a considerable extent, and that I am never tired in pursuing a favourite object until I have rendered it perfect. If I were a man of fortune I should be continually planning, building, pulling down and altering, until I produced a perfect work according to my own notion."

It was added that he relied *argument and discussion supported by facts and realities*. His opinion on that point was as follows:—

\* It has been supposed that Mr. Holme was the father of his branch of the profession; but he had several seniors. The following are some of the attorneys who were admitted before 1800, and still take out their annual certificates:—

Admitted	
White, George, of Grantham .....	Hilary Term, 1790
Jones, Thomas, of Millman-place .....	Mich. Term, 1790
Tottile, Thomas William, of Leeds .....	Mich. Term, 1791
Derby, Cobbett, of 7, Staple Inn .....	Mich. Term, 1793
Adee, William, of Oakham .....	Easter Term, 1794
Birch, James, of Great Winchester-street .....	Easter Term, 1795
Gilton, Thomas, of Bridgnorth .....	Mich. Term, 1796
Kiss, Wm. Dan., of Fen-ct., Fenchurch-st. ....	Easter Term, 1797
Geare, John, of Exeter .....	Trin. Term, 1797
Isaacs, Elias, of 32, Jewry-street, Aldgate .....	Hilary Term, 1798
Tooke, William, of 39, Bedford-row .....	Trin. Term, 1798
Astree, Thomas, of Brighton .....	Easter Term, 1799

"When I feel convinced that I am right I never give up my opinion, although I am frequently obliged to submit and give way in deference to others, but not from conviction. That is to say, I am very obstinate, and would rather make a great sacrifice than give up an opinion upon which I thought and felt to be right. I hate everything but facts—*res non verba*. I cannot endure metaphysical subjects which lead to no certain results. I think I should have liked mathematics by reason of their certainty, but I regret that I know nothing of them; and am dull at figures, although with labour I can master them."

Mr. De Ville assigned to the subject of our memoir a *high sense of honour and justice*. On which the following observation is made:—

"As to the first part of this, I don't know what to say to it, for human nature is so imperfect that there may be a high sense of honour and justice in some things but not in others. With regard to my profession, I hope I possess it to a proper extent; and when attacked on this point I certainly am most indignant, violent, and unforgiving."

The next favourable point was the possession of *warm friendship*; and Mr. Holme admitted that

"This is certainly true. I would go to the world's end to serve a man if he took my fancy; but I am cautious and fastidious in forming friendships, and unless a person pleases me I am shy, indifferent, cold, and I keep aloof."

We are next told that he was *indifferent to property, further than its use*. Here, also, there is a candid admission of accuracy:—

"This is true to a fault. I care nothing for property beyond my own few wants, and as a means of doing a kind thing now and then. I wish a Rundell or a Jemmy Wood would make me residuary legatee. I would be a most generous distributor."

Mr. Holme is then described as *sensitive to approbation but not stooping to seek popularity*. And he says:—

"I do not feel this to be true. On the contrary, I never sought for approbation in my life, but have studiously avoided coming in contact with any public manifestation of it, and the apprehension of it almost deters me from risking the encounter of it, and so strong is this feeling with me that it makes me very uneasy and uncomfortable for some time previously to any occasion when it is likely to be shewn; and I would most willingly absent myself if a sense of public duty did not prevail over my reluctance. I am content with the approbation of my own conscience if I happen to accomplish any object deserving praise."

The next note is thus expressed—he was *by no means bigotted*. And the remark is—

"This is very true: I care very little about a man's faith provided it produces works."

He is described as liable to *strong anger* if *offended, but not unrelenting*. And we are told—

"This is true. My anger and resentment are strong, and I am very unrelenting and unforgiving, but I do not seek for revenge. When a person offends me I avoid all communication with him ever afterwards, and endeavour to wipe him entirely out of recollection, and to forget that he exists."

On the other hand, he is characterised as *kind and benevolent to a fault*. And we have the following confession:—

"I don't know what to say to this—it is too complimentary. To those who take my fancy, I would be unbounded in my kindness; to those who do not exactly suit me, I entertain no ill will, and leave them to the enjoyment of what they possess in their own way without envying them. The only feeling which I have when I see people living in riot and luxury is a regret that I do not possess the same means, as I think I could apply them much better."

Such are the candid acknowledgments made by our deceased friend; and we think they tend to confirm the favourable estimate which has been formed of his character.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COUNTY COURTS ACTS AMENDMENT.

19 & 20 Vict. c. 108.

[Concluded from page 272].

51. In any such claim against a tenant as in the last preceding section is specified the Plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the same shall not exceed fifty pounds, and any misdescription in the nature of such claim may be amended at the trial.

52. When the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable thereof exceeds fifty pounds by the year, shall for one half year be in arrear, and the landlord shall have right by law to re-enter for the nonpayment thereof, he may, without any formal demand or re-entry, enter a plaint in the county court of the district in which the premises lie for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry; and if the tenant shall five clear days before the return day of such summons pay into court all the rent in arrear, and the costs, the said action shall cease, but if he shall not make such payment, and shall not at the time named in the summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that one half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to contravert such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the judge shall think fit to name, unless within that period all the rent in arrear and the costs be paid into court; and if such order be not obeyed, and such rent and costs be not so paid, the registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff, issue a warrant authorising and requiring the high bailiff of the court to

give possession of such premises to the plaintiff, and the plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant, and all persons claiming by, through, or under him, shall, so long as the order of the court remains unreversed, be barred from all relief in equity or otherwise.

53. Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rackrent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the court from which summons shall have issued, and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

54. A summons for the recovery of a tenement may be served like other summonses to appear to plaints in county courts; and if the defendant cannot be found, and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

55. Any warrant to a high bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

56. Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the judge in his order for the delivery of possession of the premises in question, and shall continue in force for three months from such date and no longer, but no order for delivery of possession need be drawn up or served.

57. The judge of a county court may at all times amend all defects and errors in any proceeding in such court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made if duly applied for.

58. Any affidavit to be used in a county court may be sworn before a judge or registrar of a county court, without the payment of any fee, or before a commissioner to administer oaths in Chancery in England, or a London commissioner to administer oaths in Chancery, or a commissioner for taking affidavits in any superior court, such commissioners respectively not being registrars, or before a justice of the peace.

59. Every warrant of commitment which shall issue from a county court shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no

longer, but no order for commitment shall be drawn up or served.

60. No officer of a county court in executing any warrant of a county court, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs, unless the damages awarded shall exceed forty shillings.

61. Any judgment summons issued out of a county court under section ninety-eight of the act of the ninth and tenth years of the reign of her present Majesty, chapter 95, or under this act, or any warrant of commitment in respect of an unsatisfied judgment or order of a county court, may respectively be in the form or to the effect given in Schedule (B.) to this act, numbered respectively (2.) and (3.); and all such summonses or warrants shall be deemed sufficient to justify proceedings under them without any further statement of facts to show jurisdiction.

62. The bankruptcy or insolvency of the plaintiff in any action in a county court, which the assignees might maintain for the benefit of the creditors, shall not cause the action to abate if the assignees shall elect to continue such action, and to give security for the costs thereof, within such reasonable time as the judge shall order, but the hearing of the case may be adjourned until such election is made; and in case the assignees do not elect to continue the action, and to give such security within the time limited by the order, the defendant may avail himself of the bankruptcy or insolvency as a defence to the action.

63. The powers and responsibilities of the sheriff with respect to replevin bonds and replevins shall henceforth cease; and the registrar of the county court of the district in which any distress subject to replevin shall be taken shall be empowered, subject to the regulations hereinafter contained, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, and such process shall be executed by the high bailiff.

64. Such registrar shall, at the instance of the party whose goods shall have been distrained, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the next two succeeding sections.

65. An action of replevin may be commenced in any superior court in the form applicable to personal actions therein, and such court shall have power to hear and determine the same; and if the replevinder shall wish to commence proceedings in any superior court, he shall, at the time of replevying, give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in a superior court, conditioned to commence an action of replevin against the distrainer in such superior court as shall be named in the security, within one week from the date thereof, and to prosecute such action with effect and without delay, and unless judgment thereon be obtained by default, to prove before such superior court that he had good ground for believing either that the title to some corporeal or incorporeal her-

ditament, or to some toll, market, fair, or franchise was in question, or that such rent or damage exceeded twenty pounds, and to make return of the goods, if a return thereof shall be adjudged.

66. If the replevisor shall wish to commence proceedings in a county court, he shall at the time of replevying give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in the county court, conditioned to commence an action of replevin against the distrainer in the county court of the district in which the distress shall have been taken, within one month from the date of the security, and to prosecute such action with effect and without delay, and to make a return of the goods, if a return thereof shall be adjudged.

67. Any action of replevin brought in a county court shall be removed into any superior court by writ of certiorari, if the defendant shall apply to such superior court or to a judge there for such writ, and shall give security, to be approved of by the master of such superior court, for such amount, not exceeding one hundred and fifty pounds, as such master shall think fit, conditioned to defend such action with effect, and, unless the replevisor shall discontinue or shall not prosecute such action, or become nonsuit therein, to prove before such superior court that the defendant had good ground for believing, either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that the rent or damage in respect of which the distress shall have been taken exceeded twenty pounds; and every such superior court shall have power to determine the same action.

68. An appeal from the decision of a county court, on the same grounds and subject to the same conditions as are provided by the fourteenth section of the act of the thirteenth and fourteenth years of the reign of her present majesty, chapter sixty-one, shall be allowed in all actions of replevin where the amount of rent or damage exceeds twenty pounds, and in all actions for the recovery of tenements where the yearly rent or value of the premises exceeds twenty pounds and in proceedings in interpleader where the money claimed or the value of the goods or chattels claimed, or of the proceeds thereof, exceeds twenty pounds, and in all actions where the parties agree that the court shall have jurisdiction.

69. No appeal shall lie from the decision of a county court, if before such decision is pronounced both parties shall agree, in writing signed by themselves or their attorneys or agents, that the decision of the judge shall be final, and no such agreement shall require a stamp.

70. Where by this act, or any act relating to the county courts, a party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party or intended party in the action or proceeding: provided always, that the court in which any action on the bond shall be brought may by rule or order give such relief to the obligors as may be just, and such rule or order shall have the effect of a defeasance of such bond.

71. Where by this act or any acts relating to the county courts a party is required to give security, he may in lieu thereof deposit with the registrar, if the security is required to be given in a county court, or with a master of the superior court if the security is required to be given in such court, a sum equal in

amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by such registrar or master, and to be signed by such party, his attorney or agent, setting forth the conditions on which such money is deposited, and the registrar or master shall give to the party paying a written acknowledgment of such payment; and the judge of the county court, when the money shall have been deposited in such court, or a judge of the superior court when the money shall have been deposited in a superior court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party or parties as to him shall seem just.

72. Where any claim shall be made under section one hundred and eighteen of the act of the ninth and tenth years of the reign of her present majesty, chapter ninety-five, to or in respect of any goods taken in execution under the process of a county court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisalment in case of dispute, to be by such bailiff paid into court, to abide the decision of the judge upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, and in default of the claimant so doing the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale, to abide the decision of the judge.

73. Any acknowledgment to be made by any married woman of any deed under the act of the third and fourth years of the reign of his late majesty King William the Fourth, chapter seventy-four, may be received by a judge of a county court in the same manner as such acknowledgment may be received by a judge of a superior court.

74. When any prison wherein any person committed by a county court may be confined is situated at an inconvenient distance from such court, one of her majesty's principal secretaries of state may, by order under his hand, direct that persons committed by such court shall be confined in any other prison named in such order to which persons may be committed from any other county court, though such prison may be in a different county, district, city, borough, or place from that in which such first-mentioned court shall be held, and may from time to time vary such order; provided that no such order shall be made without the consent of the visiting justices of the prison in which such persons are to be directed by any such order to be confined; and every person so confined shall be supported at the expense of the county, district, city, borough, or place in which he shall have resided at the time of his committal.

75. Section one of the act of the eighth year of the reign of Queen Anne, chapter fourteen, shall not apply to goods taken in execution under the warrant of a county court, but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed

and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken, unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale, next the claim of such landlord, not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly the amount for which the warrant issued; and if any replevin be made of the goods so taken, the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of and incident to the sale under the execution, and the amount for which the warrant issued; and in either event the overplus of the sale, if any, and the residue of the goods, shall be returned to the defendant; and the poundage of the high bailiff and broker for keeping possession, appraisement, and sale under such distress, shall be the same as would have been payable if the distress had been an execution of the county court, and no other fees shall be demanded or taken in respect thereof.

76. If any bond given under the provisions of any act relating to the county courts shall have been registered in the Court of Common Pleas in England, and the condition of such bond shall have been satisfied, the Commissioners of Her Majesty's Treasury, by certificate under the hands of any two of them, may authorise the proper officer of the said court to enter up satisfaction on the record of such bond or obligation.

77. From and after the passing of this act, no action or suit shall be commenced in the Hundred or Wapentake Court of Wirral in the county of Chester, and the authority and jurisdiction of the said court shall cease, and all actions or suits depending in the said court shall be transferred, with all the proceedings thereon, to the county court for the district in which the respective defendants shall then reside; and such actions and suits shall be dealt with and decided, as to the costs of the same, as well as in other respects, according to the practice of the county court or of the said Hundred Court according to the discretion of the judge of the county court, which court shall, for the purpose of such actions or suits, be deemed to have all the power and jurisdiction possessed by the said Hundred Court before the passing of this act; and every person who is legally entitled to any franchise or office in or in respect of the said Hundred Court shall be entitled to make a claim for compensation to the Commissioners of Her Majesty's Treasury within six months after the passing of this act; and the said commissioners, in such manner as they shall think fit, may inquire what was the nature of the franchise or office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the said commissioners in each case shall award such gross or yearly sum, and for such time as they shall think just to be awarded, upon consideration of the special circumstances of each case: provided always, that if any person holding any office in the said Hundred Court shall be appointed to any public office or employment, the payment of the compensation awarded to him under this act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended, if the amount of such salary or emoluments be greater than

the amount of the compensation, or, if not, shall be diminished by the amount of such salary or emoluments; and the several compensations hereinbefore granted shall be paid out of monies to be voted by Parliament, and the Commissioners of Her Majesty's Treasury of the said United Kingdom are hereby authorised to pay the same accordingly.

78. The fees payable on the proceedings in the county courts mentioned in schedule (C.) to this act shall be those therein specified; and such fees shall, except in interpleaders, or where such fees shall be payable in respect of keeping possession, appraising or selling goods seized, be paid in the first instance by the party on whose behalf any such proceeding is to be taken, before such proceeding is taken; and in default of the payment of any fees, payment thereof shall, by order of the judge, be enforced by such means as might be employed to recover any debt adjudged by the court to be paid; and a table of all fees shall be posted in some conspicuous place in every court house and in every registrar's office.

79. The Commissioners of Her Majesty's Treasury, from time to time, with the consent of the Lord Chancellor, may lessen or increase the fees which are specified in schedule (C.) to this act, or which are now payable on proceedings in the county courts taken under any act not hereinbefore recited, and may substitute other fees in lieu thereof, and may order new fees to be paid on any proceedings which are now or shall hereafter be authorised to be taken in such courts, whether any fee is now payable thereon or not: provided always, that every such alteration in the scale of fees shall be notified to both Houses of Parliament within ten days from the commencement of the session next after such alteration.

80. The salaries of the judges of the county courts shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury are hereby empowered to pay the same accordingly; and the sums which are now or may hereafter be allowed to them for travelling expenses shall be paid out of monies that may be voted by parliament for that purpose.

81. Whereas by the fourteenth section of the said act passed in the session of Parliament holden in the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-four, it was enacted, that after the passing of the said act the greatest salaries to be received in any case by the judges of the county courts should be one thousand five hundred pounds, but that in no case should any judge be paid a less salary than twelve hundred pounds; and whereas the Commissioners of Her Majesty's Treasury have ordered that the salaries of the judges whose names are mentioned in the schedule marked (D.) annexed to this act should be fixed at the amounts set opposite their respective names in such schedule; and whereas it is desirable that the salaries of the judges of the county courts should be fixed by Parliament at one uniform rate: be it enacted, that every judge of a county court shall be paid a salary of twelve hundred pounds a year, and no more: provided always, that the judges mentioned in the said schedule shall continue to receive the salaries therein mentioned to be payable to them respectively so long as they shall continue to be judges of the county courts; and provided also, that nothing herein contained shall affect the right or title of any county court judge to receive any sum or sums of money now or hereafter to be made payable to him for defraying his travelling expenses.

82. The registrars of the courts shall be paid by salaries; and the principle on which the said salaries shall be so regulated shall be, that the registrar of each court in which the plaintiffs entered do not exceed the number of two hundred in a year shall have an annual salary of one hundred and twenty pounds; and that in courts where the plaintiffs exceed two hundred in the year the salaries shall be increased by sums of five pounds for every twenty-five additional plaintiffs up to one thousand plaintiffs inclusive, and then by sums of four pounds for every twenty-five additional plaintiffs up to six thousand inclusive; and such salaries shall be inclusive of all salaries to the clerks employed by the registrar in the business of their respective courts, and of all emoluments whatsoever, except those receivable by them in proceedings in insolvency or protection; and in the courts in which the plaintiffs exceed the number of six thousand the amount of salary shall be fixed by the said commissioners, with the consent of the Lord Chancellor, but in no case shall the net salary to be allowed exceed the maximum salary of seven hundred pounds a year as provided by the act of the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-four: provided always, that the salary of any registrar acting in a similar capacity, or as clerk, before the passing of the act of the ninth and tenth Victoria, chapter ninety-five, in any court mentioned in schedule A. to that act, shall not (exclusive of all salaries to the clerks to be employed by them as aforesaid, the amount of such salaries and the number of such clerks to be sanctioned and approved by the Commissioners of Her Majesty's Treasury) be limited to any sum less than the average amount of the fees and emoluments of his office during the seven years next before the passing of the said last-mentioned act, such amount to be ascertained by the Commissioners of Her Majesty's Treasury, or to a sum less than the amount which he now receives in pursuance of any arrangement since the abolition of the court of which he was the clerk or registrar.

83. The high bailiffs of the courts shall be paid by salaries to be fixed and regulated from time to time by the Commissioners of Her Majesty's Treasury, with the consent of the Lord Chancellor, and shall, in addition to such salaries, receive for their own use the fees appointed for keeping possession of goods under executions, and such salaries shall include all payments made by the high bailiffs to their under bailiffs, or, with the like consent, the high bailiffs may be paid partly by salaries and partly by allowances for the execution of warrants, and for mileage on the service or execution of any process.

84. The salaries of the registrars and high bailiffs shall be paid out of the produce of the fees payable under the provisions of this act; and whenever the amount of such fees shall not be sufficient to pay such salaries the deficiency shall be made good out of any moneys to be provided by Parliament for that purpose; and the surplus which from time to time shall remain after payment of the said salaries shall be paid over to the credit of the said Consolidated Fund.

85. The expense of building, purchasing, or providing any messuages and lands for the purposes of the county courts, and of repairing, furnishing, cleaning, lighting, and warming the court houses and offices, and of payment of the salaries of the necessary servants for taking charge of such court houses and offices, and of supplying the courts and offices with law and office books and stationery, and

of postage stamps, and the disbursements of the high bailiffs in conveying to prison persons committed by the county courts, and all other expenses incident to the holding of the said courts, shall be paid by the Commissioners of Her Majesty's Treasury out of any moneys to be from time to time provided by Parliament for such purposes.

86. All the provisions of this act applicable to superior courts and judges thereof shall apply to the Court of Common Pleas at Lancaster and Court of Pleas at Durham, and the judges thereof respectively, being judges of one of the common law courts at Westminster, and all the said provisions applicable to masters of superior courts shall apply to the respective prothonotaries of the Court of Common Pleas at Lancaster and Court of Pleas at Durham, and their respective deputies, acting in the execution of the duties of such officers; provided that any writs of certiorari to be issued by the order of such courts or of a judge thereof shall be issued out of the Chanceries of the Counties Palatine of Lancaster and Durham respectively, and shall be made returnable into the said Court of Common Pleas at Lancaster and Court of Pleas at Durham respectively, in the same manner as other writs of certiorari of such counties palatine respectively.

# SCHEDULES REFERRED TO IN THE FOREGOING ACT.

## SCHEDULE A.

### 1. Parts of Acts repealed.

Reference to Act.	Title of Act.	Extent of Repeal.
9 & 10 Vict. c. 95.	An Act for the more Easy Recovery of Small Debts and Demands in England.	The whole of the Sects. 37, 52, 92, 107, 121, 122, 123, 126, 127, and 129.* So much of Section 102, as enacts that "no protection order or certificate granted by any Court of Bankruptcy, or for the relief of Insolvent Debtors, shall be available to discharge any defendant from any commitment" under the order of a Judge. So much of Sect. 142 as applies to the word "agent."
12 & 13 Vict. c. 101.	An Act to Amend the Act for the more Easy Recovery of Small Debts and Demands in England, and to Abolish certain Inferior Courts of Record.	The whole of Sect. 6.
13 & 14 Vict. c. 61.	An Act to Extend the Act for the more Easy Recovery of Small Debts and Demands in England, and to Amend the same.	The whole of Sects. 5, 6, 7, 17, 20, 21, and 23.
15 & 16 Vict. c. 54.	An Act further to facilitate and arrange Proceedings in the County Courts.	The whole of Sect. 1.
17 & 18 Vict. c. 16.	An Act to Amend the Act of the Thirtieth and Fourteenth Victoria, Chapter Sixty-one, and the Act of the Fifteenth and Sixteenth Victoria, Chapter Fifty-four.	The whole of Sect. 1.

\* See note, p. 268, ante, for the purport of these sections.



## SCHEDULE B.

## No. 1.

*Summons to obtain Judgment by Default on Personal Service.*

No. [of plaint].

In the [title of court issuing summons].

[Seal.]

Between A. B., Plaintiff,

and

C. D., Defendant.

[Name, description, and address of defendant.]

TAKE NOTICE.—That, unless at least six clear days before the [day of appearance to summons] you return to the registrar of this court at [place of office] the notice given below, dated and signed by yourself, or your attorney or your agent, you will not afterwards be allowed to make any defence to the claim which [name, description, and address of plaintiff] makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may, without giving any proof in support of such claim, proceed to judgment and execution. If you return such notice to the registrar within the time specified, you must appear at a county court to be held at

on the \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, to answer the above claim, which will be heard on that day.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_.

\_\_\_\_\_, Registrar of the Court.

(See back.)

*Notice of Intention to Defend.*

No. [of plaint].

In the [title of court].

A. B. v. C. D.

I intend to defend this cause.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_.

\_\_\_\_\_, Defendant.

[To be indorsed on the summons.]

If you pay the debt and costs, as per margin on the other side, into the registrar's office, before the day of hearing, and without returning the notice of intention to defend, you will avoid further costs.

If you do not return the notice of intention to defend, but allow judgment against you by default, you will save half the hearing fee, and the order upon such judgment will be to pay the debt and costs forthwith [or by instalments, to be specified as in plaintiff's written consent].

If you admit a part only of the claim, you must return the notice of intention to defend within the specified time; and you may, by paying into the registrar's office the amount so admitted, together with costs proportionate to the amount you pay in, six clear days before the day of hearing, avoid further costs, unless the plaintiff at the hearing shall prove a claim against you exceeding the sum so paid.

If you intend to rely on a set-off, infancy, coverture, a statute of limitations, or a discharge under a bankrupt or insolvent act, as a defence, you must, in addition to the notice of intention to defend, give to the registrar notice of such special defence six clear days before the day of hearing; and such last-mentioned notice must contain the particulars required by the rules of the court; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your defence be a set-off, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into court, before or at the hearing, the amount tendered.

If you give such notice of intention to defend within the time specified, you may have the case tried by a jury, on giving notice in writing at the registrar's office, two clear days before the hearing, and on payment of five shillings for the use of such jury.

Summons for witnesses and the production of documents may be obtained gratis at the office of the registrar of this court.

Hours of attendance at the office of the registrar of this court at [place of office] from ten till four.

This summons must be served personally on the defendant twelve clear days before the day appointed for the hearing.

\* Here must be signed the name of defendant, or of his attorney or agent, and in either of the last two cases the words, "attorney for" or "agent for," must be added.

## No. 2.

*Summons for Commitment.*

In the [title of court issuing summons].

[Seal.]

No. [of summons].

No. [of judgment or order].

Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas the plaintiff obtained a judgment [or if no judgment has been obtained, or if a fresh order has been obtained upon a judgment, an order] against you in the county court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_,

for the payment of £ \_\_\_\_\_ for debt [or damages], and £ \_\_\_\_\_ for costs, upon which judgment [or order], and the subsequent process issued thereon, the sum of £ \_\_\_\_\_ is now due: You are therefore hereby summoned to appear personally in this court at [place where court holds] on the \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to be examined by the court touching your estate and effects, and the circumstances under which you contracted the said debt [or incurred the said damages], and as to the means and expectation you then had, and as to the means you still have, of discharging the said debt [or damages], and as to the disposal you may have made of any property. And take notice, that if you disobey this summons the court may commit you to prison.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_.

\_\_\_\_\_, Registrar of the Court.

Hours of attendance at the office of the registrar of this court [place of office] from ten till four.

When issued under this act, insert

"Issued by leave of the judge."

## No. 3.

*Warrant of Commitment.*

In the [title of court ordering commitment].

[Seal.]

No. [of commitment].

No. [of judgment summons].

Between A. B., Plaintiff,

and

C. D., Defendant.

To the high bailiffs and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor or keeper of the [prison used by the court].

Whereas the plaintiff obtained a judgment [or order] against the defendant in the \_\_\_\_\_ county court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_,

for the payment of £ \_\_\_\_\_ for debt [or damages] and costs, upon which judgment [or order], and the subsequent process issued thereon, the sum of £ \_\_\_\_\_ was, at the date of the issuing of the summons hereto-after mentioned and still is due;

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant was required to appear at this court on the \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_, to answer such questions as might be put to him, pursuant to section ninety-eight of the statute 9th and 10th Vict., chapter 95, in relation to such debt [or damages], which summons was proved to this court to have been personally and duly served on the defendant;

And whereas this court, at the hearing of the said summons, ordered that the defendant should be committed to prison for \_\_\_\_\_ days, for [as the case may be] not appearing pursuant to such summons, or alleging a sufficient excuse for not so appearing;

Or, for refusing to be sworn;

Or, for refusing to answer such questions as aforesaid to the satisfaction of the judge;

Or, for contracting the said debt under false pretences, or by means of fraud, or breach of trust, or without reasonable expectation of being able to pay the same;

Or, for making a gift or transfer of part of his property, with intent to defraud his creditors;

Or, for having charged, or removed, or concealed part of his property with intent to defraud his creditors;

Or, for not having satisfied the said judgment and costs, having had sufficient means and ability so to do;

These are, therefore, to require you, the said high bailiffs, bailiffs, and others, to take the defendant, and to deliver him to the governor or keeper of the [prison used by the court], and you, the said governor or keeper, to receive the defendant, and him safely keep in the said prison for \_\_\_\_\_ days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

Dated this [insert date of order] day of \_\_\_\_\_ 185\_\_\_\_.

E. F.

\_\_\_\_\_, Registrar of the Court.

	£	s.	d.
Amount remaining due .....	...	...	...
Poundage for issuing this warrant .....	...	...	...
Total .....	...	...	...

This warrant remains in force one year from the date thereof.

This form to be applicable to all judgments recovered at the hearing, or by default, or by consent, and to all orders within the jurisdiction of the court.

## NOTICES OF NEW BOOKS.

*A Treatise on the Law of Mines and Minerals.* By WILLIAM BAINBRIDGE, Esq., F.G.S., Barrister-at-law. London: Butterworths. 1856. pp. 709.

THE law of minerals is of great importance in these islands, and we welcome Mr. Bainbridge's second edition as a valuable contribution to our law libraries. The learned author observes in his preface that;—

"It may justly excite surprise that, before the first publication of this work, there should have been no attempt to examine and discuss the important and interesting questions which have arisen on the subject of mines, and to reduce them to the form of a regular treatise. The subject had, indeed, received so little attention, that there hardly existed any epitome of the law respecting it in the general and elaborate books of legal reference; yet there was no country which more demanded this research. In other countries, the prerogative of the state had asserted the general right to the mines, and the ruling power was thus enabled to propound useful and comprehensive codes of laws for their development and pursuit, not only with reference to the lands in which the minerals were found, but also to the rights exacted from neighbouring proprietors. In this country the right of the Crown was limited to mines of gold and silver. Several local customs had indeed established some extensive privileges in favor of miners, and appear to sanction some larger original royal rights. But in modern times the mines of the realm have belonged to private owners, whose powers, however absolute in other respects, have been strictly confined within their own domain. This right of proprietorship, subject to all the abstruse and complicated laws of devolution and enjoyment incident to real property, and the great divisions of lands among numerous owners, have produced many corresponding impediments to the prosecution of mining, and have brought the miner into constant collision with the recognised rights of others. It is, therefore, not to be wondered that the searches of the author should have sometimes resembled, both in their character and result, the occupations of which he designed to treat, and that, like the miner, he was often compelled to traverse the labyrinths of darkness before emerging to the light of day. It might be expected that a subject which has experienced in actual practice so rapid and so comparatively recent an extension, should not stand settled by express decision with respect to many important topics. The strict conclusion of law, therefore, must often be arrived at after a process, not only of research, but of reflection. The principle of decision must, like the mineral, not only be extracted from obscurity, but it must be carefully separated from all extraneous dross, and be produced in a pure

condition, before it can be properly applied to the purposes of its attainment. An author may often still complain, with the adventurer, that the substance does not repay the cost of production, and that he must be guided by the general principles of law, or the dim light of analogy. In such cases, the author has endeavoured to elicit the true law, as well from the stores of past experience as from a more improved jurisprudence; and he has not hesitated to discuss freely the dicta and decisions of judges, many of which have been made in times when mining questions, as has been confessed by later judges, were only imperfectly understood."

This is truly and admirably expressed. The work comprises—

1. The Definition of Minerals and the manner of acquiring them.
2. The Right of Property in Minerals.
3. Royal Mines.
4. The Right to Work Mines.
5. Rights of Way and Water, and other Mining rights.
6. The Transfer of Mines.
7. The Sale of Mines and Shares, including Specific Performance.
8. Leases and Licences.
9. The Right to grant Leases.
10. Partnerships in Mines.
11. The Injuries resulting from Mining operations.
12. The Rating of Mines and Quarries.
13. The Remedies relating to Mines and Minerals.
14. The Coal Trade.
15. Local Customs.

The present edition contains much new matter relating to the rights of way, water, and incorporeal rights, manorial rights, partnerships, the construction of leases, undermining, inundations, barriers, and working out of bounds.

The appendix comprises—1st, Precedents in Conveyancing; 2nd, Local Customs; 3rd, Glossary of English Mining Terms.

As an example of Mr. Bainbridge's method of treating the subjects of his treatise, we extract his "Definitions of Minerals," and the manner of acquiring them:—

"A mineral has been defined to be a fossil, or what is dug out of the earth. The term may, however, in the most enlarged sense, be described as comprising all the substances which now form, or which once formed, part of the solid body of the earth, both external and internal, and which are now destitute of, and incapable of, supporting animal or vegetable life. In this view, it will embrace as well the bare granite of the high mountain as the deepest hidden diamonds and metallic ores.\* In deeds and other documents the term may be explained in its larger or restricted sense, according to the intention.†

These various productions are differently found: in small nests, bunches, or isolated deposits; in large irregular masses; in detached fragments; in alluvial and fluvial streams; in lodes or veins; and in a regular course of stratification.

\* *Earl of Rosse v. Wainman*, 14 M. and W., 889; 2 Exch. 800; 15 L. J. Exch. 67.

† *Davrell v. Roper*, 24 L. J., N. S., C. C. 773.

"A mineral lode or vein is a flattened mass of metallic or earthy matter differing materially in its nature from the rocks or strata in which it occurs. Its breadth varies from a few inches to several feet, and it extends in length to a considerable distance, but often with great irregularity of course. It is usually perpendicular, or nearly so, in its position, and descends, in most cases, to an unknown depth. Sometimes the sides are parallel, and sometimes they recede from each other, so as to form large accumulations, or, as they are called, bellies of mineral matter, and occasionally they approach each other so as almost, if not wholly, to cause the vein to disappear. Veins also traverse each other, and smaller ones ramify or spring out from the larger.

"Ore is a term applied to certain minerals when in their natural condition.

"There are two common modes of working for minerals—*quarrying* and *mining*, and this distinction will be afterwards shown to be of some importance.

"A quarry is an open excavation where the works are visible at the surface. A mine is formed by the penetration of the surface, without exposure of the works to the light of day, by means of pits, shafts, levels, or tunnels. This distinction does not, of course, depend upon the nature of the material, but simply upon the mode of working.\* We are to look entirely to the mode in which the article is obtained, and not into chemical or geological character.†

"It is inaccurate to say that a mine is unopened. The mine is not the substance, it is only the mode of getting the substance. A vein or a stratum may be unopened, but there can be no mine if there is no opening.‡ This expression will, however, be used in its familiar signification, and the word *mine* will often be taken as synonymous with the mineral substances.

"All minerals which are unworked and unsevered are parts of the freehold, and, as such, constitute landed property or real estate. In this condition, they will be subject to the general rules which govern the enjoyment of real property. When severed from the freehold, they become mere personal chattels."

## LAW OF ATTORNEYS AND SOLICITORS.

### RESTORATION TO ROLL AFTER BEING STRUCK OFF FOR PERJURY WHERE FREE PARDON ON CONVICTION FOR FORGERY.

It appeared that in Michaelmas Term, 1849, Mr. Edmund Garbett, then an attorney residing and carrying on business at Dawley, Shropshire, was struck off the roll of this court at the instance of the defendant in a cause of *Harcourt v. Dickson*, on the ground that, being the attorney in the cause, he had procured the plaintiff to make, and himself joined in making, an affidavit as to payments made to witnesses for their expenses, which he knew to be false. He was subsequently, at the instance of the Incorporated Law Society, struck off the rolls of the other common law courts, and of the Court of Chancery.

It also appeared that Mr. Garbett had been compelled by Lord Denman to answer certain questions which were put to him as a witness in a cause, and upon his answers thereto he was committed for trial, and convicted on May 15, 1847, of forging an acceptance to a bill of exchange. Upon the argument, however, before the Court of Criminal Appeal, the majority of the judges held that he had been improperly convicted, inasmuch as the confession of his guilt was unduly extorted from him, and he in consequence received a free pardon. This fact was not brought before the court in 1849 under the advice of the late Mr. Fred. Robinson, who was of opinion that as the Court of Appeal had decided the conviction to have been improper, and Mr. Garbett had received her Majesty's pardon, it would not be right, by a collateral proceeding, to deprive him of the benefit of the court's judgment and the Crown's clemency.

Upon a motion (May 22, 1856) for a rule nisi to restore Mr. Garbett to the roll,\* Jervis, C.J., said:

"I am of opinion that there is no pretence for this application. It is not now sought to strike Mr. Garbett off the roll of attorneys of this court, or to suspend him from practising as an attorney, for any alleged malpractice or misconduct. But the question is whether, he having already been removed from the roll for an offence of the most grave and serious character, we ought to be called upon to restore him, and so to invest him with a power and authority which, in my opinion, would make him a most dangerous individual. It appears, that in the year 1847 he was tried and found guilty of forgery, and that he afterwards received a free pardon, because a portion of the evidence which led to his conviction consisted of admissions made by him under circumstances that, in the opinion of the Court of Appeal, rendered them legally inadmissible. But notwithstanding that conviction was quashed, and notwithstanding the pardon accorded to him in consequence, there was abundant evidence to show that Garbett really was guilty of the crime laid to his charge. Are we, under these circumstances, now to say that this person is one to whom we can safely and properly give authority to practise as an attorney of this court? We start with the knowledge, derived from the best possible source—viz., his own confession, that he has been guilty of forgery; and this court has adjudged him guilty of perjury and subornation of perjury for the fraudulent purpose of putting into his own pocket money to which he was not justly entitled. This, therefore, is an application for re-admission of a person confessedly guilty of forgery, and adjudged to be guilty of perjury; and the main ground of the application is that he has already, by being seven years off the roll, suffered

\* *Rex v. Sedgely*, 2 Barn. and Ad. 65; *Rex v. Dunsford*, 4 N. and M. 349; 1 Har. and Woll. 93.

† *Rex v. Brettell*, 3 Barn. and Ad. 424.

‡ *Astry v. Ballard*, 2 Mod. 193; Co. Litt. 54 b.

\* There was an affidavit of Mr. Garbett, stating how he had supported himself and family since his removal from the roll, and that he had ever since conducted himself with strict honour and integrity, and protesting to explain some of the grounds upon which the charge against him had rested. There were also affidavits and memorials signed by a great many persons (to the number of about 150), consisting of magistrates, barristers, solicitors, merchants, and others, who professed some of them to have known him upwards of twenty-five years, and which testified to the general correctness of his conduct, and vouched him as being in their judgment a fit and proper person to be restored to the roll.

punishment enough for his delinquency. It seems to me that we should be guilty of the greatest possible dereliction of our duty if we were to re-admit a man so tainted with crimes, which of all others are the most calculated to engender suspicion and distrust. Another ground upon which we have been strongly, almost pathetically, urged to deal mercifully with Mr. Garbett, is that he has a wife and family dependent upon him for support, and that these will be the principal sufferers from the failure of this motion. That, undoubtedly, is a circumstance which we cannot but regard with the deepest commiseration and regret. But, at the same time, it must be observed that a wife and family have always been considered as guarantees to society that a man will conduct himself with honour and integrity in his dealings with the world; and we must not lose sight of the fact that, in permitting ourselves to be influenced by considerations of that sort to extend mercy to Mr. Garbett, we should be running the risk of doing the greatest possible injury and injustice to the public. Upon the whole, giving its due weight to all that has been urged on his behalf, I think I should be almost as criminal as the applicant himself if I were to yield to this application. The rule must be discharged."

Williams, J., added: "I am entirely of the same opinion. We are asked to re-admit as an attorney on the roll of this court a person who it is evident was deservedly removed from it for one of the greatest offences of which, as an officer of the court, he could be guilty. I think we could not with decency do such an act of grace, even if the offence for which Mr. Garbett was struck off the roll was the only offence of which he had been guilty. But we are also asked to shut our eyes to the fact that this man had previously been guilty of forgery. Now, it is clear to my mind that Mr. Garbett was convicted of forgery upon evidence which ought not to have been received, and therefore that that conviction was properly quashed. But it is equally clear that he was guilty of that crime. I therefore agree with my Lord in thinking that we should be guilty of a very gross dereliction of our duty if, by replacing this man upon the roll of attorneys, we were to put him in a position to exert his talents to the possible detriment of the public."

Wiles, J., concurred.

In re Garbett, 18 Com. B. 408.

## LAW UNIVERSITY.

### COLLEGES OF BARRISTERS AND ATTORNEYS.

IN the debate in the House of Commons on the 25th July relating to the results of the session, then about to close, Mr. Napier said that two years ago, upon a motion of his, a commission was appointed to inquire into the condition of the inns of court. The Vice-Chancellor Wood, Mr. Justice Coleridge, and other eminent persons were members of that commission, which laboured long and arduously. They inquired into the state of legal education in other countries, they took evidence, and agreed unanimously to a report which he believed had obtained the concurrence of the most enlightened members of the profession. But nothing had been done upon this report, and great dissatisfaction prevailed in consequence. He trusted that before next session the Government would give their attention to the subject, with a view to carry into effect the recommendation of the commissioners. He believed it would be necessary that a charter should be granted to constitute a legal university of the inns of courts.

Now we submit that a university of the inns of court, confined to members of the bar, would be an absurdity, inasmuch as the education would comprise only the science of the law, and be limited to one branch of the profession. As well might there be a "University of Physicians." We conceive that a College of Barristers, like the College of Doctors; and a College of Attorneys, like the College of Surgeons, would be the proper form of incorporation.

## LAW OF COSTS.

### OF PETITION TO OBTAIN MONEY OUT OF COURT STANDING TO SEPARATE ACCOUNT.

The Master of the Rolls in the case of *Gover v. Stilwell*, 21 Beav. 182, said that an inflexible rule, adopted by him, on petitions for the transfer of funds to a petitioner standing to his separate account, and in which no other person was interested, was, not to order a taxation of the costs, but to allow £10 to the solicitor for the costs, without taxation.

## ANALYTICAL DIGEST OF CASES.

### SELECTED AND CLASSIFIED.

#### Privy Council Appeals.

##### ALIEN.

See Patent, 1.

##### APPEAL.

1. *Reversal of finding on question of fact.*—This Court will not reverse the finding of a jury or of a court that sits as a jury upon a question of fact unless perfectly satisfied that they were wrong, as, from their knowledge of the local circumstances and the character and appearance of the witnesses they are better able to form a correct opinion than the appellate tribunal. *Ramchurn Mullick v. Luchmeechund Rodakissen*, 9 Moore, P. C. 46.

2. *In forma pauperis*—Security for costs in Court below.—An appellant who had not sued as a pauper in the Court below, admitted by the Judicial Committee to appeal in *forma pauperis*, upon the usual certificate, without giving security for the costs already incurred, and in which she had been condemned by the decrees of the Court below.—*Watts v. Beaman*, 9 Moore, P. C. 81.

Case cited in the judgment: *Lait v. Bailey*, 7 Moore, P. C. 436.

3. *Restored after dismissal for want of prosecution*—*Calcutta*.—Appeal restored after being dismissed for want of effectual prosecution within the time limited by the fifth rule of the Order in Council of the 18th of

June, 1853; the new rules having been only recently adopted by the Sudder Court at Calcutta and the appellant in ignorance of their existence, being engaged in taking steps to prosecute the appeal within the time and according to the practice previously existing.—*Gudadhur Parshad Tewarree v. Moosumut Soonderkoomaree*, 9 Moore, P. C. 86.

4. *Award of Governor in Council—Jurisdiction of Judicial Committee.*—An act of the Legislature of India, No. 18 of 1848, empowered the Governor in Council of Bombay to administer the private estate of the late Nawab of Surat, and it was by section 2 enacted "that no act of the said Governor of Bombay in Council in respect of the administration to, and distribution of, such property, from the date of the death of the said Nawab should be liable to be questioned in any court of law or equity." No provision was made for an appeal from the Governor's decision. In pursuance of the power conferred by this act the government agent at Surat, to whom the matter was referred made an award distributing the estate in certain shares, among the heirs of the deceased, which award was confirmed by the Governor in Council.

Upon an application by a claimant dissatisfied with the award to the Judicial Committee for leave to appeal from the Governor in Council's confirmation of the award: Held, that the award was not such a judicial act as to come within the operation of sec. 8 of the stat. 3 & 4 Will. 4, c. 41, or the 7 & 8 Vict. c. 69, and could not be entertained by the Judicial Committee without a special reference to them by the Crown, under sect. 4 of the stat. 3 & 4 Will. 4, c. 41.—*In re Nawab of Surat*, 9 Moore, P. C. 88.

5. *Barbadoes—Appealable value—Royal Instructions—Costs.*—The royal instructions regulating appeals from Barbadoes to the Queen in Council limit the right of appeal to cases in which the subject matter involved amounts to £300.

The Court at Barbadoes held that certain accounts and documents sought to be recovered in an action of detinue were of no value in themselves and refused leave to appeal against a judgment of nonsuit in the action. Upon a petition for leave to appeal founded upon an allegation that the value of the accounts and securities exceeded £300 their lordships granted special leave to appeal. When the appeal came on for hearing it appeared that the allegation as to the value of the accounts and documents was unfounded in fact and unsupported by evidence, upon which their lordships stopped the case and dismissed the appeal with costs.—*Wilson v. Callender*, 9 Moore, P. C. 100.

#### BARBADOES.

See *Appeal*, 5.

#### BLOCKADE, BREACH OF.

See *Prize of War*.

#### BOMBAY.

See *Appeal*, 4.

#### BRITISH GUIANA.

See *Crim. Con.*

#### CALCUTTA.

See *Appeal*, 3.

#### CANADA, CUSTOM OF.

See *Consideration Money*.

#### CONSIDERATION MONEY.

*Where receipt acknowledged in deed—Indorsement—Custom of Canada.*—Semble, where the receipt of the consideration money is acknowledged in the body of the deed, it is not the custom in Canada to have an additional acknowledgment endorsed on the deed.—*Barnhart v. Greenshields*, 9 Moore, P. C. 19.

#### COSTS.

1. *Of opposers on abandoned petition for extension of letters patent—Affidavit of merits.*—The Judicial Committee will exercise a discretion as to the allowance of an opposer's costs upon an abandoned petition for extension of letters patent.

A gross sum allowed for costs of opposer instead of referring their costs to taxation.

An affidavit of merits by the petitioner upon the question of costs, rejected, as no copy had been served upon the opposers.—*In re Milner's Patent*, 9 Moore, P. C. 39.

2. *Of opponents to elongation of letters patent—Allowance of gross sum for.*—Where there were two opponents to an application for a prolongation of a patent upon substantially the same grounds of objection the Judicial Committee, upon a successful opposition, allowed a gross sum for the costs of both parties.

Opponents' costs directed to be taxed at £100, and divided between the opponents.—*In re Jones's Patent*, 9 Moore, P. C. 41.

And see *Appeal*, 5; *Prize of War*.

#### CRIM. CON.

*Dutch Roman Law—British Guiana—Civil action by husband.*—A civil action for recovery of damages against a defendant for criminal conversation with the plaintiff's wife, lies by the Dutch law prevailing in British Guiana, and is recognised by the ordinances of the colony Nos. 19 and 29 of 1846.

A plea of exception "*Tibi adversus me non competit hac actio*" to such action rejected by the Supreme Court at British Guiana. Such judgment affirmed on appeal by the Judicial Committee.—*Norton v. Spooner*, 9 Moore, P. C. 108.

#### DEED.

See *Consideration Money*.

#### DUTCH ROMAN LAW.

See *Crim. Con.*

#### FOREIGN BILL OF EXCHANGE.

*Presentment—Reasonable time—Discharge of drawers.*—A foreign bill of exchange payable after sight must be presented for acceptance; and although there is no limited time defined by statute for presentment and no usage of trade to fix the time, yet such bill must be presented within a reasonable time.

What constitutes a reasonable time is a mixed question of law and fact for the determination of the court and the jury.

A bill of exchange was drawn at Calcutta on the 16th of February, 1848, by L. R. and Co. on D. &

Co. at Hong Kong, payable sixty days after sight, and endorsed by L. R. and Co. to M. or order. M. in consequence of the depressed state of the money market at Calcutta, and the unsaleableness of bills on China at that time at Calcutta kept the bill for five months and nine days, and then sold it to R. M., who did not present it for acceptance at Hong Kong till the 24th of October in that year, when D. and Co. refused to accept it.

Held, 1st, that the presentation of the bill for acceptance was not made within a reasonable time, and that L. R. and Co., the drawers, were discharged.

2nd. That the want of presentment was not excused by reason of the drawers continuing solvent from the date of the bill to the presentment, or that no actual damage was caused to them by the delay.—*Ramchurn Mullick v. Luckmehchand Rudakissen*, 9 Moore, P. C. 46.

Cases cited in the judgment: *Mellish v. Rawdon*, 9 Bing. 416; *Mellish v. d'Eguino*, 2 H. Bl. 966; *Fry v. Hill*, 7 Tins. 37; *Carrier v. Flower*, 16 M. and W. 743; *Robinson v. Harford*, 9 Q. B. 53; *Serie v. Norton*, 3 Moo. and Rob. 464.

#### FOREIGN PATENT.

See *Patent*, 2.

#### JURISDICTION OF JUDICIAL COMMITTEE.

See *Appeal*, 4; *Patent*, 1.

#### LACHES.

See *Patent*, 1.

#### LETTERS PATENT.

See *Patent*.

#### MAN, ISLE OF.

See *Water*.

#### NEUTRAL.

See *Prize of War*.

#### PATENT.

1. *Jurisdiction of Judicial Committee—Recalling warrant for sealing—Alien—Laches.*—The Judicial Committee have, under the 4th sect. of the 3 & 4 Will. 4, c. 41, jurisdiction to entertain a petition, referred to them by the Crown, seeking to revoke an order in council made upon their recommendation, upon an application by patentees for a prolongation of letters patent under the stat. 5 and 6 Will. 4, c. 83, and to recall the warrant for sealing such letters patent.

The Crown can at any time before the great seal is affixed, upon a proper case being made out, countermand the warrant for sealing.

An alien resident abroad who was interested in an English patent by a foreign inventor, and who had also considerable dealings in this country in respect of sales of the patented machine, and in granting licences for the use of such patent, held, in the circumstances, to have such a *locus standi* as to entitle him to petition the crown to revoke an order in council for granting an extended term of an English patent, and to recall the warrant for sealing such patent.

Whether an alien living abroad, without such interest, could inform the Crown by petition as to any matters touching letters patent. *Quære?*

Patentees applied under the stat. 5 & 6 Will. 4, c. 83, for an extension of the term of letters patent, and the Judicial Committee recommended a prolongation for six years, which recommendation was confirmed by the Crown by an order in council, and a warrant issued for sealing the letters patent. No step was taken by the patentees to procure the sealing of the new letters patent, and after a delay of nearly three years a party interested in opposing the renewal, petitioned the Crown to revoke the order in council and the warrant to seal. It did not appear that the petitioner or the public had suffered any loss by the laches of the patentees. The Judicial Committee to whom the petition was referred considered the laches not of sufficient magnitude to deprive the patentees of all benefit of the renewed patent; but made it a condition, before dismissing the petition, that the patentees should pay the petitioner a gross sum for costs, and give an undertaking not to prosecute for any infringement which might have occurred from the date of the order in council to the date of dismissal of the petition.

*Quære.* Whether an action would lie in consequence of an infringement under such circumstances?—*In re Schlumberger*, 9 Moore, P. C. 1.

2. *Foreign importation—Application for prolongation after expiration of foreign patent.*—Sec. 25 of the 15 & 16 Vic. c. 88, enacts "that no letters patent for or in respect of an invention for which any such patent or like privileges shall have been obtained in any foreign country, and which shall be granted in the United Kingdom, from the expiration of the term for which such letters patent or privilege was granted or was in force, shall be of any validity." The 16 & 17 Vic. c. 115, s. 7, declared and enacted that new letters patent granted by way of prolongation should be granted according to the provisions of the 15 & 16 Vic. c. 88.

Application was made under the 5 & 6 Will. 4, c. 83, and 2 & 3 Vict. c. 69, by the assignees of a patentee for extension of an English patent for a foreign importation patented in France. At the date of the application the French patent had expired. Held, dismissing the petition, that as the foreign patent had expired, no renewed grant would be valid by section 25 of the 15 & 16 Vic. c. 83, as s. 7 of the 16 & 17 Vic. c. 115, made an extended patent a new patent, within the provisions of s. 25 of the 15 & 16 Vic. c. 83. *In re Aube's patent*, 9 Moore, P. C. 43.

And see *Costs*, 1, 2.

#### PAUPER.

See *Appeal*, 2.

#### PRESENTMENT.

See *Foreign Bill of Exchange*.

#### PRIZE OF WAR.

*Neutral—Breach of blockade—Restitution—Costs and damages.*—Restitution of a ship seized as a prize may be attended according to the circumstances of the case with any one of the following consequences:—

1st. The claimants may be ordered to pay to the captors their costs and expenses.

2nd. The restitution may be simple restitution, without costs or expenses, or damages to either party, or,

8rd. The captors may be ordered to pay costs and damages to the claimant.

General principles applicable to condemnation of captors in costs and damages.

Costs and damages, when decreed against the captors, are not inflicted as a punishment on the captors, but as affording compensation to the injured party.

In order to exempt captors from costs and damages in case of restitution, there must be some circumstances connected with the ship or cargo affording reasonable ground for belief that the ship or cargo might prove a lawful prize.

What amounts to such a probable cause as to justify a capture incapable of definition, and is to be regulated by the peculiar circumstances of each case.

It is not necessary to prove vexatious conduct on the part of the captors to subject them to condemnation in costs and damages.

Neither will honest mistake, though occasioned by an act of Government, relieve the captors from liability to compensate a neutral for damage which the captors by their conduct have caused the neutral to sustain.

A neutral ship was captured in the Gulf of Finland by one of her Majesty's ships of war for breach of the blockade of Cronstadt, when no such blockade existed, and sent to England for adjudication as a prize. Held, reversing the sentence of the Admiralty Court, that the owners of such ship and cargo were entitled to restitution, with costs and damages, as the seizure was made without probable or reasonable cause. *Schacht v. Otter*, 9 Moore, P. C. 150.

Cases cited in the judgment: *Charming Betsey*, 2 Cranch, 98; *Statira*, 4b. 99; *Maria Shroder*, 3 Rob. 153; *Triton*, 4 Rob. 79; *William*, 6 Rob. 316; *Actaeon*, 2 Dods. 51; *Elizabeth*, 1 Acton, 10; *George*, 1 Mason, 24; *Speculation*, 2 Rob. 293; *Nemesis*, *Edwards' Rep.* 50; *Washington*, 6 Rob. 275; *Rufus*, 2 Dod. 55; *Huldah*, 3 Rob. 235; *Driver*, 5 Rob. 145; *Betsy*, 1 Rob. 93; *Elize*, 1 Spinks, 88; *Luna*, *Edwards' Rep.* 190; *John*, 2 Dod. 356; *Mentor*, 1 Rob. 179; *Zacheman*, 5 Rob. 152; *San Juan Nepomuceno*, 1 Hagg. 265; *Eleanor*, 2 Wheat. 357; *Lindo v. Rodney*, 2 Doug. 614; *Haabet*, 6 Rob. 54; *Lively*, 1 Gallia, 327.

#### PROLONGATION OF PATENT.

See *Costs*, 1, 2; *Patent*, 2.

#### PURCHASER.

See *Vendor and purchaser*.

#### REASONABLE TIME.

See *Foreign bill of exchange*.

#### RESTORATION OF APPEAL.

See *Appeal*, 3.

#### QUESTION OF FACT.

See *Appeal*, 1.

#### SECURITY FOR COSTS.

See *Appeal*, 2.

#### VALUE, APPEALABLE.

See *Appeal*, 5.

#### VENDOR AND PURCHASER.

*Equity of tenant in possession against purchaser—Notice of interest—Absolute assignment and sale—Mortgage.*—Where a tenant is in possession of land, a

purchaser is bound by all the equities which the tenant could enforce against the vendor.

This equity of the tenant extends not only to interests connected with his tenancy, but also to interests under collateral agreements.

The principle is the same in both classes of cases, that the possession of the tenant is notice that he has some interest in the land, and a purchaser having notice of that fact is bound to inquire what that interest is.

But a purchaser is not bound to attend to rumours or to statements by mere strangers. A notice, to be binding, must proceed from some person interested in the property.

B., the owner of land in West Canada, under a contract of sale from the chancellor and scholars of King's College, being indebted to T. and Co., induced P. to assume the debt, and to secure him from any loss in consequence of such assumption, by deed poll endorsed on his original contract of sale, absolutely assigned the land to P. Up to the time of this assignment, B. himself had never been in the actual possession of the land, his father having managed the same as his agent. P. afterwards, to satisfaction of certain debts due by him, assigned the land conveyed to him by B., with other property to G. This assignment was also endorsed on the original contract of sale. Prior to the execution of this assignment G. made some inquiries about the ownership of the property, but it did not appear that he received any information that B. was the owner.

In a suit by B. against P. and G. for redemption, held, upon appeal (affirming the decree of the Court of Error and Appeal in Canada)—

1st. That, under the circumstances, the transaction between B. and P., although in form an absolute assignment and sale, was in effect a mortgage only.

2nd. That as G. had acted with proper bona fides taking the assignment from a party who had the original contract of sale in his possession, and who had taken an absolute assignment of that contract, he had no notice actual or constructive of B.'s title.—*Barnheart v. Greenhields*, 9 Moore, P. C. 18.

Cases cited in the judgment: *Taylor v. Skibbert*, 1 Ves. j. 427; *Daniels v. Davison*, 16 Ves. 249; *Allen v. Ashouby*, 1 Mer. 219; *Crofton v. Ormesby*, 2 Sch. and Let. 583; *James v. Smith*, 1 Hare, 60; *Balley v. Richardson*, 9 Hare, 734; *Oxwith v. Plummer*, 2 Vern. 635.

#### WATER.

*Grant of use of stream—Prescriptive right—Division of stream—Law of Isle of Man.*—Grant of the use of a stream of water from an artificial flow over the grantor's land for the purpose of working "a mill or otherwise, an instrument wherewith to plate iron, and likewise a smithy," the grantor engaging to keep up a full dam of water for that purpose. Held, in the absence of any objection by the grantor, or those claiming under him, to the use of the water during a period of 50 years, for other purposes than those limited by the grant, to confer by the law of the Isle of Man, on the grantee, a prescriptive right in the water granted, and damages awarded for a diversion of the stream by the representative of the grantor.

*Semble*, whether if the grantor had prescribed the use of the water to a specific object, it could be used for any other purpose? *Tobin v. Stowell*, 9 Moore, P. C. 71.

Case cited in the judgment: *Magor v. Chadwick*, 11 A. and E. 571.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, AUGUST 30, 1856.

### THE NEW STAMP DUTIES' ACT.

19 & 20 Vict. c. 81.

THE Statute Law Commissioners have announced that a bill for the consolidation of all the acts of Parliament relating to Stamp Duties has been prepared, and is under the consideration of the Commissioners of Stamps. If the act be successfully prepared, it will be invaluable to the legal profession as well as the public, and we trust it will be printed early in the session, so as to allow the practitioners ample time to consider all its details, and to suggest such amendments as may render it as perfect as possible.

In the meantime it appears that the Government have been induced to amend the present law in regard to three points of no very great importance to the public at large, though we presume that the relief which the act affords has been pressed for by the parties interested, and will be satisfactory to them.

#### I. STAMPING ARTICLES OF CLERKSHIP.

We shall first notice the amendment of the laws relating to the stamping of articles of clerkship to attorneys and others. By the 7 Geo. 4, c. 44, the Commissioners of Stamps were not to stamp, after six months from the date thereof, any articles of clerkship, contract, or other instrument, whereby any person should be bound to serve as a clerk or apprentice in order to admission as a solicitor, attorney, proctor, writer to the signet, &c.

It is now enacted by the 3rd section of the 19 & 20 Vict. c. 81, that from the passing of the act (29 July, 1856), the Commissioners of Inland Revenue, *where directed so to do by the Commissioners of her Majesty's Treasury*, may stamp any such instruments upon payment of the duty chargeable thereon at the date thereof, and of the following penalties:—

Instruments dated and executed before 5th Aug. 1853, £20.

Instruments brought to be stamped within one year from the date*.....	£10
After one year, and within two .....	£20
After two years, and within three .....	£30
After three years, and within four .....	£40
After four years .....	£50

\* Although the time is to be reckoned from the date, we presume it must be shown that the contract was then actually created, and the service commenced.

The present power of the Commissioners of Inland Revenue to stamp articles of clerkship on payment of a penalty of £5, within six months, does not appear to be repealed. That power was exercised as a matter of course on all applications, and we presume will be continued.

It sometimes happened that, not for the sake of saving the immediate outlay of the stamp duty, but for the purpose of ascertaining whether the young gentleman liked the profession, the payment was postponed for six months, and formerly the penalty was only £2 more than the interest of the money.

Under the present act, however, the Commissioners are not authorised to affix the stamp unless so directed by the Treasury. It is not improbable, therefore, that a reasonable case must be made out to satisfy the authorities that the ordinary rule should be relaxed in the case of the applicant. It may be that some instances of extraordinary hardship have occurred, where, by no omission of the parents of the article clerk, the articles have remained unstamped, and yet the whole service has been duly performed, and irreparable injury would result if another five years' servitude were required. "Hard cases make bad law." We trust that the relief contemplated by the act will not be perverted to dangerous purposes. To guard against any fraudulent practice, it would have been better to confide the exercise of the power of the act to the Judges, instead of the Treasury, and the judges would probably have made regulations under which due notice would be given of such applications, and of the grounds on which they were made, like applications to renew or take out certificates, and affidavits in support thereof being filed at the judges' chambers and the masters' office, the necessary inquiries might be made by the Incorporated Law Society as registrar of attorneys. The Lords of the Treasury may, however, adopt some rules by which any deception on them may be prevented.

We mention these points because we know it was generally considered that the stamp duty of £120 constituted some safeguard, as a property qualification, against the admission of improper persons into the profession. Mr. Gladstone, when pressed, as Chancellor of the Exchequer, to repeal the annual certificate



duty, thought proper, unasked, to reduce the duty of £120 to £80, for the sake, as he avowed, of a "more free competition," and took off one-fourth only of the annual tax. We remember that the Incorporated Law Society, having charge of the measures for the repeal of the certificate duty, were blamed in certain quarters as if they had favoured the reduction of the duty on articles of clerkship—a measure which the Government of its own mere motion adopted. It is true that this tax on entering the legal profession (not imposed on the medical) is for the most part paid by the parents of the articulated clerks, but it often tends to lower the premium for instruction which ought to be paid to the attorney, and it must be admitted that the large sum paid in this way would be better bestowed in providing means for a superior kind of legal education, by the endowment of an attorneys' college, and the establishment of law libraries and law lectures in the cities and large towns in the country.

An important point will arise in the operation of the act in regard to the registration of articles of clerkship which remain unstamped for more than six months after their execution. Under the Attorneys and Solicitors' Act, 6 & 7 Vict. c. 73, articles cannot be registered without an order of the court after the expiration of six months; and unless the articles are registered the service cannot be "deemed good service." When, therefore, a contract has been made on unstamped paper, and the instrument is subsequently stamped under the provisions of the new act, the case must come before the court on an application for leave to register the articles *nunc pro tunc*; and the court will require proof of *bona fide* service from the date of the contract, and probably also some satisfactory reason for the delay in stamping the articles according to the usual course.

## II. STAMPING INSTRUMENTS OF PROXY.

Considering the great number of meetings which take place annually, or oftener, of public companies, at which the proprietors or shareholders who do not personally attend are entitled to vote by proxy, it must be advantageous that such proxies are now made receivable when stamped with the moderate duty of sixpence, instead of the former stamp on powers or letters of attorney.

This relief is effected by the 1st section of the 19 & 20 Vict. c. 81.

## III. STAMPS ON FREEDOM OF THE CITY OF LONDON.

The act of 1 & 2 Vict. repealed the stamp duty on admissions to freedom by *birth* or *servitude* in any city or borough returning members to Parliament. In the city of London the right to vote in ward elections is vested in *freemen-occupiers*, on whose admission a stamp duty was payable.

The 3rd section of the 19 & 20 Vict. c. 81, repeals the stamp duty on the admission to the freedom of the city of London by redemption; but leaves unrepealed the stamp on admissions to the freedom of any company.

The following are the title and sections of the act:

An Act to reduce the Stamp Duties on certain Instruments of Proxy; to amend the Laws relating to the stamping of Articles of Clerkship to Attorneys and others; and to exempt from Stamp Duty Admissions to the Freedom of the City of London by Redemption. [July 29, 1856]

Whereas it is expedient to reduce the stamp duties on certain instruments of proxy, and to amend the laws relating to the stamping of articles of clerkship to attorneys and others: be it therefore enacted as follows:—

1. From and after the passing of this act, in lieu of the stamp duties now payable on the several instruments of proxy hereinafter described, there shall be charged and paid the duties following; that is to say—

For and in respect of every letter or power of attorney, and every commission, faculty, mandate, or other instrument in the nature thereof, made for the sole purpose of appointing or nominating a proxy to vote at any meeting within any part of the United Kingdom of the proprietors or shareholders of or in any joint stock company or other company or society whose stock or funds are divided into shares, and transferable, or made for the purpose of appointing, nominating, or authorising any person to vote as a proxy, commissioner, mandatory, or otherwise, at any parish meeting of heritors or proprietors of real or heritable property in Scotland, the stamp duty of sixpence.

2. The provision contained in section 6 of the 7 Vict. c. 21, relating to instruments for appointing proxies, thereby charged with a certain stamp duty and also, so far as the same shall be applicable, and shall not be inconsistent with such provision, all other powers, provisions, clauses, regulations, directions, allowances, and exemptions, fines, forfeitures, pains, and penalties contained in or imposed by any act or acts relating to any duties of the same kind or description, shall, for and in the raising, levying, collecting, and securing of the duties hereby granted, and otherwise in relation thereto respectively, have full effect, and be observed, applied, allowed, enforced, and put in execution with respect to the last-mentioned duties, and to the vellum, parchment, and paper, matters and things, charged and chargeable therewith, and to the persons signing, or voting or acting, or attempting to vote or act, under any such instrument, as fully and effectually, to all intents and purposes, as if the same had been herein repeated, and specially enacted with reference to the duties hereby granted, and the instruments charged or chargeable therewith.

3. And whereas by the 7 Geo. 4, c. 44, it is enacted, that it shall not be lawful for the Commissioners of Stamps or any of their officers to stamp, under any pretence whatever, after the expiration of six months from the date thereof, any vellum, parchment, or paper upon which shall be engrossed, printed, or written any articles of clerkship, contract, indenture, or other instrument, whereby any person shall become bound to serve as a clerk or apprentice, in order to his admission as a solicitor, attorney, proctor, writer

to the signed, agent, or procurator in any of the courts of law or equity, or the High Court of Admiralty, or any ecclesiastical court, or the Courts of Session, Justiciary, Exchequer, Commission of Teinds, or the Commissary Court, or any inferior court in Great Britain: Be it enacted, that it shall be lawful for the Commissioners of Inland Revenue, notwithstanding the said last-mentioned act, in any case where they shall be directed so to do by the Commissioners of Her Majesty's Treasury, to stamp any such instruments as last mentioned, upon payment of the duty chargeable thereon at the date thereof, and of such further sum as hereinafter specified by way of penalty, and in lieu of all other penalties; that is to say—

As to any such instrument bearing date and executed before the fifth day of August, one thousand eight hundred and fifty-three, the sum of twenty pounds;

As to any other such instrument where the same shall be brought to be stamped within the period of one year from the date thereof, the sum of ten pounds;

After one year and within two years, twenty pounds;

After two years and within three years, thirty pounds;

After three years and within four years, forty pounds;

And after four years, fifty pounds.

4. Whereas by 1 & 2 Vict., intituled An Act to repeal the Stamp Duty now paid on Admissions to the Freedom of Corporations in England, it was enacted, that after the passing of that act no stamp duty should be chargeable on the admission of any person entitled to take up his freedom by birth or servitude in any city or borough in England returning a member or members to serve in Parliament: And whereas in the City of London the right to vote in ward elections is vested in the freemen occupiers, and it is expedient that all impediments to the admission of occupiers in the City of London to the freedom of the City of London by redemption for that purpose should be removed, and that the stamp duty payable on such admission should be abolished: Be it enacted, that from and after the passing of this act no stamp duty shall be chargeable on the admission of any person to the freedom of the City of London by redemption: provided always, that this act shall not repeal any stamp duty now payable on the admission to the freedom of any company.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ADMINISTRATION OF INTESTATE ESTATES.

19 & 30 Vict. c. 94.

Repeal of Section 4 of 22 & 23 Car. 2, c. 10, and part of section 18 of 11 G. 1, c. 18, save with respect to estates of persons who have died before 31st Dec. 1856; special customs concerning the distribution of personal estates of intestates in certain places to cease.

An Act for the uniform Administration of Intestate Estates. [29th July, 1856].

Whereas it is expedient that throughout England and Wales one uniform rule should prevail concerning the distribution of the personal estate of persons

dying intestate: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

I. That from and after the thirty-first day of December one thousand eight hundred and fifty-six, section four of the act passed in the session holden in the twenty-second and twenty-third years of King Charles the second (chapter ten), "for the better settling of intestate estates," and also so much of section eighteen of the act of the eleventh year of King George the first, chapter eighteen, "for regulating elections within the city of London, "and for preserving the peace, good order, and government of the said city," as preserves the custom of London in the case of persons dying intestate, shall be repealed, save only with respect to the distribution of the personal estate of persons who may have died on or before the said thirty-first day of December; and the special customs concerning the distribution of the personal estate of intestates observed in the city of London, or in relation to the citizens and freemen of such city, and in the province of York, and certain other places, shall, with reference to all persons dying on or after the first day of January, one thousand eight hundred and fifty-seven, wholly cease and determine, and the distribution of the personal estate of all persons so dying shall take place as if such customs had never existed, and as if the rules for the distribution of the personal estate of intestates generally prevalent in the province of Canterbury had prevailed throughout England and Wales, any law or statute to the contrary notwithstanding.

## COUNTY COURT FEES.

[According to the 19 & 20 Vict. c. 108.]

For every plaint—10d. in the pound.

No fee shall be payable on any application for a new trial, or to set aside proceedings, or in the nature of a *scire facias*, or for a summons in an interpleader.

For every judgment by consent under the 18 & 14 Vict. c. 61, sect. 8 or 9, and for every judgment by default—1s. in the pound.

For every hearing—2s. in the pound.

An additional hearing fee shall be taken for every new trial.

The hearing on interpleader shall not be prepaid, but shall be estimated on the amount of the money or the value of the goods claimed, which value, in case of dispute, shall be assessed by the judge, who at the hearing shall direct by whom, and when, and how, such fee shall be paid.

No fee shall be payable for hearing any application for a new trial, or to set aside proceedings, or in the nature of a *scire facias*.

For every jury—5s. shall be paid to the registrar by the party demanding the jury, on such demand, for the use of the jurors.

For every summons for commitment under the 9 & 10 Vict. c. 95, sect. 98—3d. in the pound on the amount of the original demand then remaining due.

For every hearing of the matters mentioned in such summons for commitment—6d. in the pound on the amount last aforesaid.

For issuing every warrant against the body or goods—1s. 6d. in the pound on the amount for which such warrant shall issue.

For issuing every warrant to deliver possession of tenements—1s. 6d. in the pound.

For taking the acknowledgment of a married woman—£1.

#### *High Bailiff's Fees.*

For keeping possession of goods till sale, per day (including expenses of removal, storage of goods, and all other expenses), not exceeding five days—6d. in the pound on the value of the goods seized, to be fixed by appraisement in case of dispute.

#### *Brokers and Appraisers' Fees.*

For the appraisement of goods, whether by one broker or more—6d. in the pound on the value of the goods appraised, over and above the stamp duty.

For the sale of goods, including advertisements, catalogues, sale and commission, and delivery of goods—1s. in the pound on the net produce of sale.

In all plaints for the recovery of debt or damages, all poundage, except where otherwise specified in this schedule, shall be estimated on the amount of the claim.

In replevins all poundage, except as aforesaid, shall be estimated on the amount of the alleged rent or damage, to be fixed by the registrar.

In plaints for the recovery of tenements when the term has expired or been determined by notice, all poundage, except as aforesaid, shall be estimated on the amount of the weekly, monthly, or yearly rent of the tenement, as such tenement shall have been let by the week or by the month, or for any longer period; and if no rent shall have been reserved, then on the amount of the half-yearly value of the tenement, to be fixed by the registrar.

If in any plaint for the recovery of tenements a claim be made for rent or mesne profits, an additional poundage shall be paid on the amount of such claim.

In plaints for the recovery of tenements for non-payment of rent, all poundage, except as aforesaid, shall be estimated on the amount of the half-yearly rent of the tenement.

In every case where the poundage would but for this rule be estimated on an amount exceeding £20, it shall be estimated at £20 only.

In every case where the poundage cannot be estimated by any rule in this schedule, it shall be estimated on £20.

All fractions of a pound, for the purpose of calculating poundage, shall be treated as an entire pound.

Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of costs, he shall pay the difference, unless the reduction shall be caused by a set-off.

In cases of interpleader the judge may allow at the hearing the actual costs incurred by the high bailiff in keeping possession of the goods claimed, and no more.

No increase of fees shall be made by reason of there being more than one plaintiff or defendant.

## SALARIES OF THE COUNTY COURT JUDGES.

[According to the 19 & 20 Vict. c. 108.]

R. Brandt, Esq., Judge of the County Court of Lancashire, holden at Manchester	£1,500
F. Bayley, Esq., Judge of the Westminster County Court of Middlesex	1,500
J. Pollock, Esq., Judge of the County Court of Lancashire, holden at Liverpool	1,500
J. L. Adolphus, Esq. Judge of the Marylebone County Court of Middlesex; the Brompton County Court of Middlesex; and the County Court of Middlesex holden at Brentford	1,500
Mr. Serjeant Storks, Judge of the Shoreditch and Bow County Courts of Middlesex	1,500
J. Pitt Taylor, Esquire, Judge of the Lambeth County Court of Surrey, and the County Court of Kent holden at Greenwich and Woolwich	1,500
W. Walker, Esq., Judge of the County Courts of Yorkshire, holden at Barnsley, Doncaster, Goole, Rotherham, Sheffield, and Thorne	1,500
T. H. Marshall, Esq. Judge of the County Courts of Yorkshire, holden at Leeds, Dewsbury, Pontefract and Wakefield	1,500
J. W. Harden, Esq., Judge of the County Courts of Cheshire, holden at Altrincham, Birkenhead, Chester, Knutsford, Nantwich, Northwich, and Runcorn; and of the County Courts of Lancashire, holden at Salford and Warrington	1,500
Mr. Serjeant Clarke, Judge of the County Courts of Staffordshire, holden at Oldbury, Wallasey, and Wolverhampton; and of the County Court of Worcestershire, holden at Dudley	1,500
George Clive, Esq., Judge of the Southwark County Court of Surrey	1,500
D. D. Heath, Esq., Judge of the Bloomsbury County Court of Middlesex	1,500
Mr. Serjeant Jones, Judge of the Clerkenwell County Court of Middlesex	1,500
J. Stansfeld, Esq., Judge of the County Courts of Yorkshire, holden at Halifax, Holmfirth, Huddersfield, and Todmorden	1,500
Mr. Serjeant Manning, Judge of the Whitechapel County Court of Middlesex	1,500
Leigh Trafford, Esq., Judge of the County Courts of Warwickshire, holden at Atherstone, Birmingham, and Tamworth	1,500
J. Addison, Esq., Judge of the County Courts of Lancashire, holden at Blackburn, Burnley, Clitheroe, Colne, Garstang, Kirkham, Lancaster, Poulton, and Preston	1,500
Mr. Serjeant Dowling, Judge of the County Courts of Yorkshire, holden at Easingwold, Knaresborough, Leyburn, Northallerton, Richmond, Ripon, Selby, Stokesley, Thirsk, Wetherby, Whithy, and York	1,500
F. Dinwale, Esq., Judge of the County Court of Leicestershire, holden at Lutterworth; of the County Court of Northamptonshire, holden at Daventry; of the County Court of Oxfordshire, holden at Banbury; of the County Courts of Warwickshire, holden at Alcester, Coventry, Nuneaton, Rugby, Solihull, Southam, Strat-	

<i>ford-on-Avon, and Warwick; and of the County Court of Worcestershire, holden at Shipston</i> ... ..	1,850
W. Furner, Esq., Judge of the County Courts of Sussex, holden at <i>Arundel, Brighton, Chichester, Cuckfield, East Grinstead, Hastings, Horsham, Lewes, Midhurst, Petworth, Rye, and Worthing</i> .	1,850
T. Falconer, Esq., Judge of the County Courts of Brecknockshire, holden at <i>Brecknock, Builth, Crickhowell, and Hay</i> ; of the County Courts of Glamorganshire, holden at <i>Bridgend, Cardiff, Merthyr Tydfil, Neath, and Swansea</i> ; and of the County Court of Radnorshire, holden at <i>Bhasiadr</i> ... ..	*
J. St. John Yates, Esq., Judge of the County Courts of Cheshire, holden at <i>Congleton, Hyde, Macclesfield, and Stockport</i> ; of the County Court of Derbyshire, holden at <i>Glossop</i> ; and of the County of Lancashire, holden at <i>Ashton-under-Lyne</i> ... ..	*

## REPORT OF THE SELECT COMMITTEE ON CAPITAL PUNISHMENTS.

That the committee have met, and considered the subject-matter to them referred; and have examined witnesses, and received communications on the following points:

On the effects produced by executions for capital offences as they are now conducted—

1. On the spectators.
2. On the population of the towns where the execution takes place.
3. On other criminals.
4. On the criminal himself.
5. As to the evils which may be apprehended from the substitution of comparative privacy, in carrying the last sentence of the law into effect, for the present system of entire publicity.
6. As to the advantages which may result from such a change.
7. As to the effects which have been found to result from such a change in other countries in which the altered system has been adopted.

On the first six of these heads of enquiry it is, from the nature of the case, impossible to arrive at anything more certain than opinion: the committee have therefore endeavoured to obtain the opinion of those who, from their official position, possessed peculiar opportunities of drawing their conclusions from actual observation of the working of the present system, and have sifted the grounds on which these opinions have been formed.

On the first head of inquiry, the effect, that is to say, of the sight of capital punishment on the mass of the spectators, the great preponderance of evidence represents the sight of capital execution as by no means generally deterring in its effect; that it is regarded as a mere sight to which people throng from all parts (Answers 191, 192, 193, 194). That in the words of the witnesses it is regarded "as a show" (Letter 8); and "that all kinds of levity, jeering, laughing, hooting, whistling, whilst the man is coming up—while he is still suffering—whilst he

is struggling, and his body is writhing, are going on; with obscene expressions" (234); that "the sight clearly diminishes the awfulness of the effects of capital punishment" (235, 333); that there was no evidence of any moral impression (45); that the death of the criminal is followed by "sounds of low jesting and indecent ribaldry" (85), "the hubbub and uproar being most disgusting" (Letter 2). That in conversation afterwards the spectators "made light of it" (103), with such remarks as, "I should not care about being hanged, if that is all" (105); that it was not to them "a terrible sight" (322); that when viewed more seriously, it was too often from the gratification of merely "vengeful feelings" (110, 333); that its tendency is "to harden those who see it" (113, 233), who "go to it as they would to a theatre, or the exhibition of a bull-fight; pretty nearly the same faces being observed near the scaffold on each occasion" (263). On the other hand one witness, who has had opportunities of observation, thought that the present mode "had a very decidedly beneficial effect" (355); that it "tended to prevent the commission of crime" (353, 372); and that even those who laughed and joked at the time might afterwards be affected by it; but he added, that he knew no instance of this, whilst the notion of the honour of criminals "dying game" (378) was "very common amongst the lower class of society" (367); and that "speaking individually, he was decidedly of opinion, that it would be much better that executions should take place privately, the present mode satisfying a morbid curiosity which ought not to be gratified" (363—365).

2. On the second point, of the moral effect upon the towns where executions take place, it was stated in evidence,—that "the whole town for the day was a scene of riot and drunkenness and debauchery of every kind" (377); that the roads approaching it were, towards evening, "filled with disorderly and drunken persons" (19); that the country people "flock in as to a bull-baiting or a cock-fight;" and, after the solemn scene is over, "the day is invariably one of drunkenness, oaths and disorder" (19); that the "day is a kind of holiday spent at the beer-shops" (213). "The disgraceful state of the town," says a witness of the highest character, "on the day of execution, exceeded anything that I had before witnessed, or could have credited" (Appendix 8).

3. On the third point, of the effect produced on the criminal portion of the population, the evidence was, that the present mode tended to glorify the criminal, and so invest crime with something like the honours of martyrdom (19); that criminals were commonly found to have been frequent attendants at executions (47, 49, 85, 219); that the terrors of death were lightened by the spectacle (142, 170, 172, 173, 239), and "a hardening effect produced on those who were already tainted with crime" (290, 339); "that the imagination of an evil-doer would draw a far more impressive picture of an execution taking place within the gaol, out of his sight, than would be actually presented to his eyes in public" (333); and that "no good effect could be traced in criminals to their having witnessed executions" (380); but that "if criminals were executed within the prison walls, and seen no more after trial and sentence, it would strike terror and dismay into the wicked" (Appendix 2).

4. On the criminal himself the effect was described as leading "to bravado, protestations of innocence, singing hymns" of triumph (331); and as "having altogether an injurious influence." (332).

\* We presume that these blanks will be construed as meaning each £1,350.

† See in Queen's Printer's copy.

5. As to the evils which might be apprehended from any change of system, one of the witnesses gave his "decided opinion that the public execution of criminals deters from crimes" (872). He was also convinced, that "no plan for private executions would satisfy the public generally" (859). He thought "that doubts and suspicions might prevail in the public mind whether the execution had really taken place" (864); and "that the middle and lower classes would wholly disbelieve in the fact of such executions" (873, 890). Another witness thought that such suspicions might exist when sentence had been pronounced against a man of the higher classes, unless some chosen panel of witnesses testified as to the fact (98). Whilst two others wrote, "that the public is certainly in favour of public executions" (Appendix 7). On the other hand, one witness, eminently qualified to form a correct judgment, writes—"I have no hesitation in confidently stating that in my opinion no benefit, directly or indirectly, is derived from public executions (Appendix 8).

6. On the advantages which might be looked for from such a change, many of the witnesses gave their opinions. They urged the great advantage of the removal of those evils which have been already enumerated as accruing to the spectators of such scenes generally, to the criminal portion of the community, to the criminals themselves, and to the towns in which public executions are now carried into effect; and they added the expression of their conviction "that a certain mystery and uncertainty about the actual extinction of life creates greater solemnity upon the mind than the public witnessing of the act" (109); that "if it was known to those who might be congregated about, by the tolling of a bell, or some external signals, such as raising a black flag, that at that moment the man was dying, they would more reflect on what was going forward, and it would be attended with a better and more awful effect" (176, 241, 242, 333, 339 [Appendix 2]). Such was stated by one witness to be "the general opinion of the police officers employed under him" (305, 306, 307); and on this principle in another district the prisoners were not allowed to see the execution of capital offenders (184, 185, 186); whilst the witnesses "did not see the slightest difficulty in carrying into effect executions in comparative privacy, so as to remove all danger of the apprehension that they had not been carried into effect, both by the classes who constitute the lookers-on and the community at large" (188). Various modes were suggested for securing this end, such as impanelling a jury for the purpose; admitting a certain number within the walls of the gaol, and allowing them to be present; holding an inquest on the body, &c.

7. As to the customs of other countries with regard to executions, and the effects which have resulted from them, the committee received evidence that in Prussia, and in several of the northern German states, executions have for the last ten or twelve years been always carried into effect within the prison walls (392); that in many of the states of North America the practice of carrying into effect executions within the gaol walls before some few admitted spectators was adopted ten or twelve years ago (426). The executions, also, in the colony of British Guiana are carried into effect within the prison walls (Appendix 5). In Prussia and in America certain official witnesses are present, and a few spectators are admitted by the authorities. The reasons given for the adoption of the change were "the bad moral effects which had been found to

follow from public executions" (399); "the morbid feelings excited by the spectacle leading to the commission of crime, and even to the greater frequency of murder" (399); whilst "it drew away attention from the real awfulness of the punishment" (401); and "tended to make the criminal a hero" (402, 428); that "no evils had followed from the adoption of the present plan" (408); "that diverting executions of their circumstance and parade made them more terrible to the offenders" (431); that "no suspicion had arisen as to the fact of the execution being actually carried into effect" (437); that "there have been rather fewer murders since the change" (412); that "the public feeling in Prussia is decidedly in favour of the present plan, and that a return to the old mode would be generally condemned by all classes" (404, 405, 406, 407); and that in the United States "the opinion of the country is so strong in its favour, that there is no doubt the practice will exist throughout the whole of the union in a very short time" (427, 428).

On reviewing the whole of the evidence, the committee are of opinion—

1. That executions should in future be carried into effect within the precincts of the prison, or in some place securing similar comparative privacy.
2. That a certain number of official witnesses be present at the execution, and sign a deposition to having witnessed it.
3. That such other spectators as the local authorities see fit to admit be also allowed to be present.
4. That the exact time of the execution be made known to those without, as for instance by the tolling of a bell, which shall cease at the moment of execution, and the hoisting at the same time of a black flag.

And the committee have directed the minutes of evidence taken before them, together with an appendix thereto, to be laid before your lordships.

7th July, 1856.

## INCORPORATED LAW SOCIETY.

### ANNUAL REPORT OF THE COUNCIL,

24th June, 1856.

IN proceeding to state to the Annual General Meeting of the Society the transactions of the past year, the Council propose to report the result of their proceedings under the following heads:—

- 1st. The parliamentary measures for the alteration of the law, which more or less affect the interests of the general body of attorneys and solicitors.
- 2nd. The efforts made to place upon a proper footing the fees of solicitors for business in the Court of Chancery.
- 3rd. The proposed new courts and offices, the changes in the practice of the courts, questions of professional usage, encroachments on the rights of solicitors, and cases of malpractice.
- 4th. The legal education and examination of articulated clerks.
- 5th. The general affairs and present position of the society.

### I. PARLIAMENTARY MEASURES.

*Alterations in the law.*—Since the last annual meeting, several of the bills then pending which affected the interests of solicitors have passed into laws. They all during their progress received such

attention and consideration as, on the part of the profession, the Council deemed advisable. And as these changes in the law are numerous, and many of them of great importance to the legal practitioner, it may be useful briefly to state their purport, before proceeding to the bills in progress through the legislature.

Those relating to the administration of justice were as follow:—

18 & 19 Vic. c. 42, authorising the *administration of oaths* abroad by British Consuls, the execution of certain notarial acts, and providing for the admission of *documentary evidence* in the courts here without proof of seal or signature.

By c. 45, the practice relating to *county palatine trials* is assimilated to that of other counties with respect to issues from the superior courts of common law at Westminster.

By c. 48, the jurisdiction of the courts in the *cinque ports* in civil suits and proceedings is abolished, and transferred to the ordinary jurisdiction of the courts of common law and equity.

By c. 90, the right of costs in *Crown suits* in revenue matters is given to the successful party in the same manner as in proceedings between subject and subject.

The act in regard to which there was much discussion in both houses, and a reference to a select committee, was the new and summary remedy on dishonoured *bills of exchange and promissory notes*. A bill had passed the House of Lords to assimilate the law here to that of the so-called "summary diligence" in Scotland. By c. 67, a new form of writ is provided, and final judgment follows in twelve days, unless the judge permits an appearance and defence, but this special remedy is optional to the plaintiff, and must be taken within six months from the time when the bill shall become due. Instead, therefore, of the creation of a new register office for dishonoured bills, and the employment of notaries instead of attorneys, the jurisdiction of the common law courts has been preserved.

By c. 111, actions may now be brought on *bills of lading* by the parties to whom the bills have been indorsed, in their own, instead of the names of consignees. Previously to this act, the property passed to the endorsee, but the rights of contract continued in the original shipper or owner.

The acts affecting the *law of property* are the Infants' Marriage Settlement Act (c. 38), and the Charitable Trusts Act (c. 124).

The former act was passed to remove the disadvantages which had arisen to persons who married during minority, and were incapable of making binding settlements of their property. This may now be effected under the sanction of the Court of Chancery, but the act does not apply to male infants under twenty, nor to females under seventeen. The Charitable Trusts Act of 1855 enlarges and amends the Charitable Trusts Act of 1853, and confers additional powers on the commissioners in conducting their inquiries into charities, calling trustees before them, the appointment of official trustees, granting leases, &c.

Another very important act (c. 133), established for the first time the principle of *limited liability* amongst the partners in joint stock companies with regard to the debts and engagements of such companies.

In the department of *criminal law* it is necessary to mention only one act (c. 126).

For diminishing expence and delay in the admini-

nistration of justice, under which summary powers are given to justices in petty session as to larceny not exceeding 5s. in value, the payment of expences and restoration of property, with power to increase the salaries of police magistrates, and compensating the clerks of peace for the loss of fees.

A bill was long before parliament relating to the *despatch of business in Chancery*. By c. 184, provision is made for the transfer of the business of the Report Office to the clerks of records and writs,—the extension of the jurisdiction of the judges at chambers,—the increase of the salaries of the judges' chief clerks and the clerks of records and writs,—the appointment of additional junior clerks and the apportionment of their salaries,—the grant of retiring pensions and compensations, &c.

The statutes of the present session affecting alterations in the law are—

The *Drainage Advances* Amendment Act, 19 Vic. c. 9, authorising the commissioners, with the sanction of the Treasury, to make advances in circumstances not previously provided for.

The *Trial of Offences* Act, c. 16, authorising the Court of Queen's Bench to order the trial of indictments to be removed into that court, and to be tried at the Central Criminal Court, though the offences might not be committed within its jurisdiction.

The *Drafts on Bankers* Act, c. 25, which carries into effect the intention of the drawers of cheques, who, for the purpose of security, require that they should be payable only through the hands of a banker.

*Bills in Parliament*.—The council have next to bring to the notice of the meeting the several bills in Parliament which have been introduced in the present session, and the provisions of which they have taken into consideration, in so far as they appeared to bear upon professional practice.

There have been several changes under consideration as to the law of property.

The *Settled Estates* Bill, by which it is proposed that the Court of Chancery should be empowered to direct the sale, or the grant of leases, of estates for the benefit of the parties interested,—measures which can only at present be effected by the expensive and dilatory means of a private act of Parliament.—The council have suggested some amendments in this bill, and have supported its general principle as advantageous to the parties interested in such estates.

*Married Women's Reversionary Interest* in Personal Property.—The council are of opinion that this bill will be useful if amended, so as to place the law as to personal on the same footing as it is now with regard to real property.

The *Charitable Uses* Bill has also been under consideration, the object of which, amongst other provisions, is to diminish the length of time, during which the deed of gift must be enrolled before the decease of the donor.

The *Advowsons* Bill appears to be unobjectionable. It empowers parishioners and others to sell advowsons held in trust, and to apply the proceeds in providing parsonage houses, augmenting small livings, and to other beneficial purposes.

The acts relating to the *drainage* of lands have again been brought before Parliament, for the purpose of further extending the powers of the commissioners.

The *Tithe Commutation* Bill proposes to declare the effect of former acts as to parochial assessments, and to make provision for the more just and uniform

rating of tithe commutation rent-charges to the relief of the poor.

The bills which may be considered as particularly relating to the *Courts of Law and Equity* are as follow:—

The *Appellate Jurisdiction* of the House of Lords, for the improvement of which it is proposed to authorise the appointment of two deputy speakers, with peerages for life, selected from personages who have held high judicial office for five years.

The *Ecclesiastical Courts Abolition* Bills are three in number: one brought in by the Solicitor-General, another by Sir F. Kelly, and the last by Mr. Collier.

In the first two bills it is proposed to establish a new "court of probate," and in the last to transfer the business to the common law courts and the county courts. The main difficulty in the arrangement is to provide a just and practicable compensation to the proctors for the loss of their practice, whether in London in the Prerogative Court, or in the country in the several Diocesan and other courts, which are several hundreds in number. It yet remains also to arrange the jurisdiction in divorce causes and clergy discipline.

The *Procedure and Evidence Bill*, introduced by Sir Fitzroy Kelly, proposes to extend the rules of evidence very largely—namely, the power of cross-examining and contradicting the evidence of witnesses; the administration of oaths; testimony in cases of adultery, and breach of promise of marriage; the uncorroborated testimony of a single witness, except in cases of treason and affiliation; the evidence of traders' account-books; enforcing the attendance of witnesses; admitting confessions, though threats or promises were held out; but excepting confessions to clergymen or medical men; receiving the depositions of deceased witnesses; expenses of witnesses; payment of money into court in actions of assault, libel, &c.; limitation of actions against retiring partners; oral authority to sign written agreements; in certain criminal cases wives not presumed to act under coercion of husband; and other alterations in the rules of evidence and the mode of procedure.

The Council have also attended to the City of London Corporation Bill, and so far as it relates to the jurisdiction and practice of the *Lord Mayor's Court*, by way of foreign attachment, in which several amendments have been suggested.

Several bills for the alteration or amendment of the mercantile and commercial laws have been introduced this session.

The *Mercantile Law Amendment* and the *Mercantile Law of Scotland Bill*, which have been for some time before the House of Lords, were referred to a select committee, mainly with regard to the proposed abolition of the clause in the Statute of Frauds, which required contracts of a certain amount to be in writing, which alteration is strongly opposed by the merchants of the city. These bills have passed the House of Lords.

The *Joint Stock Companies Bill*, including the provision for limited liability has passed the House of Commons, and is in committee in the House of Lords. It provides that the winding up of limited liability companies shall take place in the Court of Bankruptcy, leaving the winding up of all other companies to the Court of Chancery.

The *Law of Partnership Bill*, if passed, will enable capitalists to lend their money for carrying on trading and commercial business, and deriving in-

terest proportional to the profits, without being involved as general partners; and so also agents and managers of companies may be remunerated in proportion to the profits, without incurring the liability of partners.

In the department of *criminal law*, and the jurisdiction of magistrates,

The bill which has called for the most attention, is the *County and Borough Police Bill*, which after many alterations has passed the House of Commons.

A bill for the appointment of *public prosecutors* has been proposed including deputy prosecutors, district agents, and official attorneys. Evidence has been taken before a committee of the House of Commons, and the bill for carrying the project into effect is before a select committee.

The bill for amending the *qualification of justices of the peace*, continues the provision in former acts, preventing attorneys, solicitors, and proctors from acting as justices of the peace whilst in practice. They form the only class of the community *indivisibly* so excluded by statute. If they *as a* eligible for the appointment that they would be selected by the lord lieutenant, and approved by the Lord Chancellor, they ought not to be disqualified. They may act as justices for cities and boroughs; and under the Municipal Corporation Act, when elected to the office of Mayor, they are justices of the peace, *virtute Officii*, for their year of office, and for the year following. Writers to the signet, and solicitors of the supreme courts of Scotland, are not disqualified from acting as justices of the peace for counties in Scotland, and they are appointed to that office in common with other gentlemen of equal position in their respective counties.

The Council therefore proposed that the clause in question should be omitted from the bill, and that the only restriction should be that,

"Any attorney, solicitor, or proctor, acting as a justice of the peace for any county, riding, or division, should be prohibited practising professionally, either directly or indirectly, in any general or petty sessions, or in any other business transaction, before justices of the peace, or in any criminal business, either at assizes or quarter sessions."

The bill has been withdrawn for the present session.

## II. REMUNERATION OF SOLICITORS.

The members of the society are aware, from the previous annual reports of the Council, and from the details contained in the appendix to the report of last year, that the Council have for several years used their exertions to improve the system which regulates the taxation of the fees of solicitors, for business transacted in the Court of Chancery, and to obtain for them a just remuneration for their services. In consequence of the representations made by the Council to the Lord Chancellor, the whole subject was referred by his lordship to the consideration of Lord Justice Turner, Vice-Chancellor Wood, Mr. Follett, and Mr. Walton.

Under that reference some members of the Council and other witnesses have been examined by the commissioners; and the commissioners have made their report to the Lord Chancellor, accompanied with a new scale of fees, which is now under the consideration of his lordship, and the Council have reason to hope that this question will shortly be brought to a satisfactory conclusion.

(To be concluded in our next.)

## LAW OF COSTS.

## ON SALE BY THE COURT UNDER EQUITY JURISDICTION IMPROVEMENT ACT.

In a suit for the administration of the estate of a testator, an order was made under the 15 & 16 Vict. c. 86, s. 56, directing certain mortgaged premises to be sold, and they were sold accordingly. Upon further directions, it was referred to the Taxing Master to tax the defendant John Crook Rumsey (the present petitioner) his costs, charges, and expenses properly incurred in or about the execution of the trusts of the will of the testator, and relating thereto, and his costs of this suit, as between solicitor and client.

In pursuance of this order, the petitioner's bill of costs was taxed, when the Taxing Master disallowed the two following items:—

"Mr. Waller having raised certain queries on the title, perusing and considering same, and inspecting several of the deeds, and drawing answers thereto and copy, £1 1s.

"Copy abstract of the title for the purchaser's solicitor, 26 sheets, £4 6s. 8d."

The petitioner having objected to the disallowance, the Taxing Master, on reconsideration, disallowed the first item as before, but he reduced the second item to 13s. 4d. only, which sum he allowed in respect of four sheets of the copy submitted to counsel, on which counsel had written his notes and queries. The four sheets required to be recopied to render the copy abstract submitted to counsel fit to be sent to the purchaser's solicitor.

The Taxing Master, in his certificate, stated his reasons for such disallowance and allowance as follow:

"No. 1. Mr. Waller is the conveyancer employed by the defendant to peruse the title and draw conditions. The solicitor, as is usual, charges for drawing the conditions. I have disallowed this charge, because I consider the solicitor is remunerated for his trouble in answering the queries of his counsel, by the charge for drawing the conditions.

"No. 2. It is not usual to charge for a second fair copy of the abstract for the purchaser, unless under special circumstances, when counsel have made notes on the copy laid before him, so as to render it unfit to go to the purchaser. For this reason, I have disallowed the second copy charged, except four sheets, on the back of which Mr. Waller seems to have written his opinion."

On a petition to review the taxation, the *Master of the Rolls* said—

"I have ascertained, that according to the old practice it was not customary, except in difficult cases, to send an abstract of title to counsel to prepare the conditions of sale, before putting the property up to sale by auction; but the solicitor used to draw the conditions of sale, and he was allowed to charge for a draft abstract of title, and one fair copy of it, which was delivered to the purchaser; the abstract thus delivered to the purchaser was returned by him, with his queries written upon it; and it was not usual to have two fair copies. Under the statute for the Improvement of the Jurisdiction of Equity, and the general orders

of the court, before a sale by the court, an abstract of the title is now laid before the conveyancing counsel, with a view to the preparation of the conditions of sale. The question raised is this: whether a second copy of the abstract to be delivered to the purchaser shall be allowed as a matter of course? and I think it ought not. There may be special circumstances in which a second copy may be allowed, but they do not exist in the present case.

"Where some of the sheets of an abstract, which has been laid before counsel, are rendered useless by remarks written upon it, and new sheets are prepared and substituted in their place, the re-copying of such new sheets is allowed; and in this case that allowance has been made. This, however, is not a matter of course, but lies in the discretion of the taxing master; and if sheets are rendered useless, the re-copying may, in the discretion of the taxing master, be allowed for.

"As to the second item, counsel having raised objections, and made sundry queries with reference to the title, the solicitor has charged for perusing the same, inspecting deeds, &c., and copy. The taxing master says that he is remunerated for this by the charge usually made for drawing the conditions of sale, and that it is not a matter of course to allow this charge, for the solicitor is, in fact, relieved from the labour of drawing the conditions of sale by counsel. This is a matter also in the discretion of the taxing master, and is not to be allowed as of course. I think, therefore, that the taxing master is right, and the petition must be dismissed without costs."

*Rumsey v. Rumsey*; *ex parte Rumsey*, 21 Beav. 40.

## NOTES ON RECENT STATUTES.

## COMMON LAW PROCEDURE ACT, 1854.

## FORM OF ANSWERS TO INTERROGATORIES UNDER s. 51.

*Seem*, that the answers to interrogatories under the 17 & 18 Vic. c. 125, s. 51, ought not to be general. The proper course is to answer each interrogatory categorically, or to assign reasons for refusing to answer each question specifically.

Where a party objected to the sufficiency of the answers filed on February 23, 1856, an application on May 5, for a *viâ voce* examination under s. 58, was held too late. The party should apply promptly or satisfactorily explain the delay.

*Chester v. Wortley and another*, 18 Com. B. 239.

## PRODUCTION OF DOCUMENTS ON HEARING OF MOTION, UNDER s. 46.

Upon the hearing of a rule  *nisi* to rescind an order for the review of the taxation of a bill of costs, it was objected that neither the rule, nor the affidavits on which it was drawn up, disclosed what the taxation was.

The Court, in the exercise of their discretion, under the 17 & 18 Vict. c. 125, s. 46, ordered the allocatur to be produced for their inspection, without imposing any terms.

*Ashurst v. Foulkes*, 18 Com. B. 261.



## PARLIAMENTARY RETURNS.

## PUBLIC BILLS POSTPONED.

[The Bills marked thus \* are not Government Bills.]

1. Aberdeen Colleges ... ..	Second reading put off for three months, July 25.
2. *Aggravated Assaults ... ..	Second reading put off for six months, May 7.
3. Bankruptcy and Insolvency (Ireland) ... ..	Order for Committee discharged, July 17.
4. *Bleaching, &c., Works ... ..	Order for second reading discharged, April 15.
5. *Bleaching, &c., Works (No. 2). ... ..	Second Reading put off for six months, July 2.
6. Burial Acts Amendment ... ..	Order for second reading discharged, July 10.
7. *Carliale Canonries ... ..	Order for second reading discharged, June 27.
8. *Church Rates ... ..	Order for second reading discharged, May 21.
9. *Church rates Abolition ... ..	Order for Committee discharged, June 27.
10. Civil Service Superannuation ... ..	Order for Committee discharged, July 18.
11. Coalwhippers, Port of London ... ..	Order for second reading discharged, July 4.
12. *Contractors Disqualification Removal ... ..	Order for second reading discharged, February 7.
13. Court of Chancery (Ireland) ... ..	Order for Committee discharged, July 1.
14. *Court of Chancery (Ireland) Appeals ... ..	Committed to a Select Committee, and reported June 24. No further stage.
15. *Court of Chancery (Ireland) Jurisdiction ... ..	
16. *Court of Chancery (Ireland) Procedure ... ..	
17. *Court of Chancery (Ireland) Receivers ... ..	
18. *Court of Chancery (Ireland) Sales of Estates ... ..	Order for second reading discharged, July 21.
19. Criminal Appropriation of Trust Property ... ..	
20. Customs (another Bill brought in and passed) ... ..	
21. Dublin Metropolitan Police ... ..	
22. *Dublin University ... ..	Order for second reading discharged, July 10.
23. Dwellings for Labouring Classes (Ireland), No. 2 ... ..	Second reading put off for three months, July 18.
24. *Ecclesiastical Courts, &c. ... ..	Order for second reading discharged, July 14.
25. *Ecclesiastical Courts Jurisdiction ... ..	Dropped, on order for second reading, July 14.
26. Education (Scotland) ... ..	Order for second reading discharged, June 27.
27. *Episcopal and Capitular Estates ... ..	Committed to a Select Committee, February 20.
28. *Gaols, &c. ... ..	Order for second reading discharged, July 17.
29. *Grand Juries (Ireland) ... ..	Dropped, on order for second reading, July 23.
30. Grand Jury Cess (Mayo) ... ..	Second reading put off for three months, July 7.
31. Imprisonment for Debt ... ..	Second reading put off for three months, July 11.
32. *Judges and Chancellors ... ..	Order for Committee discharged, July 14.
33. *Judgments, Execution, &c. ... ..	Order for Committee discharged, July 17.
34. Juries (Ireland) ... ..	Order for second reading discharged, July 1.
35. *Justices of the Peace Qualification ... ..	Considered in Committee; no report made, May 21.
36. Juvenile Offenders (Ireland) ... ..	Order for Committee discharged, June 27.
37. Local Dues on Shipping ... ..	Order for second reading discharged, February 26.
38. London Corporation ... ..	Order for second reading discharged, June 26.
39. Lunatic Asylums (Ireland) ... ..	Order for second reading discharged, May 23.
40. Lunatic Asylums (Ireland), No. 2 ... ..	Dropped, on order for adjourned debate on consideration of Bill as amended, July 16.
41. *Maynooth College ... ..	Order for second reading discharged, June 26.
42. *Medical Profession ... ..	Order for Committee discharged, July 7.
43. *Medical Qualification and Registration ... ..	Reported from Select Committee, June 10; no further proceeding.
44. Metropolis Local Management Act Amendment ... ..	Order for Committee discharged, May 9.
45. Ministers' Money (Ireland) ... ..	Second reading put off for six months, April 16.
46. Municipal Reform (Scotland) ... ..	Order for second reading discharged, March 12.
47. National Gallery Site ... ..	Order for second reading discharged, June 30.
48. Nuisances Removal, &c. (Scotland) (Another Bill brought in and passed) ... ..	Order for second reading discharged, May 22.
49. Outlawries ... ..	No day fixed for second reading.
50. Parochial Schools (Scotland) ... ..	Order for consideration of Lords' Reasons, &c., discharged, July 25.
51. Partnership Amendment ... ..	Order for Committee read and discharged, March 10.
52. Partnership Amendment, No. 2 ... ..	After third reading Bill withdrawn, July 14.
53. Poor Law Amendment ... ..	Order for second reading discharged, May 23.
54. Poor Law Amendment, No. 2 ... ..	Order for second reading discharged, July 10.
55. *Poor Law (Ireland) ... ..	Order for second reading discharged, July 22.
56. *Procedure and Evidence ... ..	Dropped, on order for Committee, July 14.
57. *Proctors in Ecclesiastical Courts ... ..	Second reading negatived, July 22.
58. Public Health ... ..	Committee put off for three months, July 8.
59. Queen's Colleges ... ..	Order for second reading discharged, July 15.

60. *Railway and Canal Traffic ... ..	Second reading put off for six months, June 17.
61. *Rating of Mines ... ..	Order for second reading discharged, July 2.
62. *Scientific and Literary Societies ... ..	Dropped, on order for Committee, July 14.
63. Scotch and Irish Pauper Removals ... ..	Order for second reading discharged, June 27.
64. *Speciality and Simple Contract Debts ... ..	Order for second reading discharged, June 12.
65. *Spirit Trade (Ireland) ... ..	Order for second reading discharged, June 11.
66. *Summary Jurisdiction ... ..	Order for second reading discharged, May 22.
67. *Tenant Right (Ireland) ... ..	Order for Committee discharged, July 9.
68. *Testamentary and Matrimonial Jurisdiction ... ..	Dropped, on order for Committee, July 14.
69. Tithe Commutation Rent Charge ... ..	Order for Committee discharged, July 14.
70. Vaccination ... ..	Order for Committee discharged, July 10.
71. Wills and Administrations ... ..	Order for Committee discharged, July 10.

BILLS WHICH HAVE COME FROM THE LORDS.

72. Agricultural Statistics ... ..	Order for second reading discharged, June 20.
73. Appellate Jurisdiction ... ..	Committed to a Select Committee, July 10.
74. Divorce and Matrimonial Causes ... ..	Order for second reading discharged, July 17.
75. Dulwich College ... ..	Order for second reading discharged, July 21.
76. Joint Stock Companies Winding-up Acts Amendment ... ..	Committee deferred for three months, July 17.

LECTURES AT THE INNS OF COURT.

MICHAELMAS TERM, 1856.

*Properties of the Lectures to be delivered during the ensuing Educational Term by the several Readers appointed by the Inns of Court.*

CONSTITUTIONAL LAW AND LEGAL HISTORY.

THE Public Lectures to be delivered by the Reader on Constitutional Law and Legal History will comprise the following subjects:—

Temper and Character of England at the Accession of Charles the First—Privileges of the House of Commons—Character and Result of Political Struggles during his Reign—Influence of the Church—Attempts to make it Independent of State Control—Conduct of the Judges during the Reigns of the Stuarts—Progress and History of Jurisprudence—Reigns of Charles and James the Second—Causes of the Revolution—Reign and Policy of William the Third.

Review of the Origin and Causes of the English Constitution, from the Reign of John to the year 1688.

Comparison of the French and English Governments and Jurisprudence.

In his Private Lectures the Reader will proceed from the Reign of Charles the Second to the year 1782.

*Books:* Millar's View of the English Constitution; Clarendon's History, and May's History; Burnet's History of His Own Time; Hallam's Chapters on the Reigns of the Stuart Kings, and the Reign of William the Third; The State Trials; Stephen's Blackstone; Macaulay's History, 4th Volume; Rapin's History of Charles the First and Second; Tindal's Continuation—Reign of William the Third.

The Reader on Constitutional Law and Legal History will deliver his Public Lectures at Lincoln's Inn Hall, on Wednesday in each week (the first lecture to be delivered on the 12th of November), commencing at two p.m. The reader will receive his private classes on Tuesday, Thursday, and Saturday Mornings in each week, at half-past nine o'clock, in the Benchers' Reading Room, at Lincoln's Inn Hall. The first private class to be held on Thursday, the 15th November).

EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, a course of six lectures on—The Influence exercised by the Norman Conquest on Judicial Procedure in England; The History and Constitution of the Court of Chancery; The Principles of Pleading in Equity; and The Jurisdiction in Bankruptcy.

The Reader on Equity proposes to form two private classes—senior and junior, according to the amount of preliminary knowledge possessed by the students; using, in the junior, "Smith's Manual of Equity Jurisprudence" as a text-book; and, in the senior, whilst following the division adopted in the Manual, illustrating the subject by a more frequent reference to cases.

The Reader on Equity will deliver his public lectures at Lincoln's Inn Hall, on Thursday in each week during the Educational Term, commencing at two o'clock p.m. (The first lecture to be delivered on the 6th of November). The reader will receive his private classes on Mondays, Wednesdays, and Fridays, at half-past three p.m., in the Benchers' Reading Room. (The first private class to be held on Friday, the 7th of November).

LAW OF REAL PROPERTY, ETC.

The Reader on the Law of Real Property, &c., proposes to deliver, in the ensuing Educational Term, a course of six public lectures on the following subjects: 1. A Comparison between the Old and the New Law of Wills; 2. The Statutes 1 Vic. cap. 26, and 15 & 16 Vic. cap. 24. 3. The Decisions upon those Statutes.

In his private classes the reader on real property law will explain the common forms of wills, give suggestions as to the best mode of framing wills, and examine minutely the latest decisions on the Wills Acts.

The public lectures will be delivered at Gray's Inn Hall, on Friday in each week, at 2 p.m. (The first lecture to be delivered on the 7th of November). The private classes will be held in the north library of Gray's Inn, on Monday, Wednesday, and Friday mornings, from a quarter to twelve to a quarter to two o'clock. (The first private class to be held on Monday, the 10th November).

## JURISPRUDENCE AND THE CIVIL LAW.

The Reader on Jurisprudence and the Civil Law proposes, in the course of the ensuing Michaelmas Term, to deliver six public lectures on the following subjects: 1. The Elementary Principles of Roman Law respecting Proprietary and Possessory Rights, Modes of Acquisition and Transfer, and the Classification of Things. 2. The Departments of International Law which have been affected by Roman Jurisprudence, particularly Capture in War, Maritime and Territorial Dominion, Sovereignty, Occupation, Possession, and Prescription.

With the private classes the reader will proceed regularly through the principal departments of Roman law, beginning with the law of persons. The Institutes of Justinian and the Commentaries of Gaius will form the basis of the Lectures, and will be read together; but on certain days selected portions of the Digest will be taken. Reference will frequently be made to the Institutions and Commentarii Juris Romani Privati of Warnkönig, and to the Explication Historique of Ortolan. The private classes will assemble at the class-room in Garden-court, Middle Temple, on Tuesdays, Thursdays, and Saturdays, at a quarter to four p.m.; the first meeting to take place on the 18th November. The first public lecture will be delivered in the Middle Temple Hall, on Tuesday, the 11th November.

## COMMON LAW.

The Reader on Common Law proposes to deliver, during the ensuing educational term, a course of six public lectures on the subjects undermentioned:—

Lecture 1 will be Introductory to the Study of our Common Law—will indicate the various matters of which it takes cognisance, and specify its leading branches and sub-divisions. Lectures 2 and 3 will be devoted to an Examination of certain Maxims and Principles of our Common Law which concern the Crown, especially of the following Rules: That the Sovereign can do no Wrong—That the Rights of the Crown cannot be barred by Lapse of Time—That where the King's title and that of a Subject concur, the King's title shall be preferred. These rules will be considered, not in their Constitutional bearing, but strictly in reference to private Rights and Remedies at suit of or against the Sovereign. Lectures 4 and 5 will treat of the Nature of Legal Rights and Remedies as between Subject and Subject. Lecture 6 will be devoted to an Inquiry concerning such Rules of Legislative Policy as are recognised and ordinarily applied in Courts of Common Law.

With his private class the reader will pursue, in detail, the various subjects and topics above sketched out; and in so doing will refer principally to the following works: Blackstone's or Stephen's Commentaries, vols. 1 and 2; the Treatises of Messrs. Chitty and Allen on the Royal Prerogative; and Dwarria on Statutes, 2nd edit.

The public lectures will be delivered in the Hall of the Inner Temple on Monday in each week, at 2 p.m. (The first lecture on Monday, November 10th). The private class will be held in the Hall on Tuesday, Thursday, and Saturday mornings, from a quarter to twelve to a quarter to two o'clock. (The first private class to be held on Tuesday, the 11th November.

By Order of the Council,

(Signed) RICHARD BETHELL, Chairman.

Council Chamber, Lincoln's Inn,  
August 4, 1856.

NOTE.—The Educational Term commences on the 1st Nov., and ends on the 22nd Dec., 1856.

The first meeting of each private class will take place on the usual morning or evening of meeting next after the first public lecture on the same subject.

## LEGAL EXAMINATION DISTINCTIONS.

I am glad to learn that some distinction will be conferred on the candidates who pass a superior examination. The diligent student will receive his reward; but from some experience amongst aridetic clerks, I think the number of competitors for the intended prize will not be great. The majority will be content to *pass* "without more." This is a step forward in the right direction, and will doubtless be beneficial and creditable to the profession.

I wish, however, to ask one question. Will the candidates who "go in for honors" be required to give notice of their intended competition.

This will perhaps be the better course. Such candidates as do not give notice may console themselves by conjecturing that if they had competed, they might have carried off one of the prizes; and they cannot be classed amongst the unsuccessful. The Examiners, also, will be saved a large share of trouble if they are only called upon to investigate the papers and decide on the several degrees of merit of fifteen or twenty candidates instead of 100. The answers of the majority may then be considered merely for the purpose of ascertaining whether a sufficient number of the questions have been satisfactorily answered to justify a certificate of "fines and capacity" for admission.

ATTORNEYS.

[We are unable to answer the question thus propounded. In all probability the regulation on this point will be announced before next term, in time to give the notice, if any should be required.—*En. L. O.*]

## SELECTIONS FROM CORRESPONDENCE.

## LANDLORD AND TENANT.

A. RENTS a house of B. as a yearly tenant. A. gives notice to quit at Midsummer, 1856, which the landlord accepts. A. himself left the house two years ago, leaving his wife in possession, who, contrary to A.'s wish, refused to quit. There was no sufficient distress on the premises to countervail the arrears of rent due above £20, the few articles remaining not being worth 20s. The wife retains the key, and sleeps in a neighbour's house. Will the landlord be justified in considering the wife a trespasser, and in turning her out of possession with the aid of a Police constable?  
CITIZ.

A tenant gives notice to his landlord to quit at Midsummer Day, which he fails to do, and holds over until the 21st July—when he is ejected. To what rent is the landlord entitled, subsequently to Midsummer? The statute gives (I forget which) either double rent or double value, but up to what time is that to be computed?  
ONE, &c.

## SURRENDER OF LIFE POLICIES.

Doubtless not a few persons who commence insuring their lives, before many years elapse feel

themselves unable to pay the premiums. An offer is therefore made to surrender the policy, but not a shilling will be allowed unless premiums have been paid for at least five years. To guard against such injustice, I beg to suggest the insertion of a clause in the policy of assurance defining the terms on which a surrender might be made according to the number of years that had elapsed from its commencement.

ARGO.

## LOAN SOCIETIES.

Perhaps some of the greatest nuisances of the present day are the pretended loan societies, so calculated to impose and take in the unwary.

Some time ago a friend of mine, lured by the address of a mutual loan fund association, in the vicinity of Covent Garden, and by a bow and arrow promise of a proposal, with every expense stated, paid between 20s. and 30s. as fees, demanded to make some pretended inquiries as to his sureties. He proposed for an inconsiderable advance, and although his sureties were most respectable house-keepers, the loan was refused, *but the fees retained*. Doubtless the object of the fees was to raise funds to pay the promoters for their trouble.

I hope a searching inquiry will be made in a committee of the Commons House of Parliament into the transactions of these societies, and the result exposed to the world. The report would shew whether the pretended societies had any capital or money to advance at all.

The respectable portion of the profession eschew any connexion with such abominable societies. Whether a separate list of all professional men connected with such, and published in the Law List, would be useful and tend to check fraud, I am unable to say.

A friend of mine indorsed a bill for £20 as additional security for a clergyman, whose life, he was told, was insured, and deposited with the office, and on which he would have a lien. The assured died: he was refused the pretended lien on the policy, and had to pay the £20, and no less than £11 18s. 6d. costs to the attorney.

BLUE.

## PROFESSIONAL LISTS.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From July 22nd to August 22nd, 1856, both inclusive, with dates when Gasetted.

Batrd, Charles R., and John W. Muirhead, Glasgow, writers.—July 25.

Blundell, John, and Samuel Sharman, Liverpool, attorneys and solicitors.—Aug. 8.

Carter, John Richard, and John Carter, Spalding, attorneys, solicitors, and scriveners.—Aug. 8.

Chaplin, John Clarke (deceased), John Richards, and James Stubbins, Birmingham, attorneys and solicitors.—Aug. 15.

Cox, Peter, and James Warden, Beaminster, attorneys and solicitors.—July 29.

Gee, George, and Edward Jessel, 13, Buckingham-street, Strand, attorneys and solicitors (under the style or firm of Stanford, Gee, and Jessel).—Aug. 22.

King, Henry, and John Tompsett, Mayfield, Sussex, attorneys and solicitors.—Aug. 22.

Murray, John, and Charles Pool Froom, Whitehall-place, Westminster, attorneys and solicitors.—Aug. 8.

## PERPETUAL COMMISSIONERS.

Appointed under the *Pines and Recoveries' Act*, with dates when Gasetted.

Bell, John Williams, Gillingham, in and for the county of Dorset.—July 22.

Bousman, Edward, Bromsgrove, in and for the county of Worcester.—July 22.

## COUNTRY COMMISSIONERS.

To *Administer Oaths in Chancery*. Appointed under the 16 & 17 Vic. c. 78, with date when Gasetted.

Lewis, William, Crickhowell.—July 25.

## NOTES OF THE WEEK.

## EQUITY CHAMBERS—VACATION.

*During the Vacation until further Notice.*

All applications which are necessary to be made at the judges' chambers are to be made at the chambers of the Vice-Chancellor Kindersley.

Parties desiring to make any urgent special application to the court during the vacation are to apply at the said chambers for an appointment.

The chambers of the Vice-Chancellor Kindersley will be open every day in the week except Saturday and Monday from eleven to one.

## LAW APPOINTMENTS.

Mr. S. Wauchope has been appointed to officiate as chief magistrate of Calcutta.

Mr. G. F. Cockburn has been appointed to officiate as Commissioner of Revenue and Circuit for the Cuttack Division.

Mr. C. K. Hudson has been appointed second class principal assistant to the Commissioner of Assam.—*Civil Service Gazette*.

Mr. George Anthony Herring, solicitor, has been appointed clerk to the magistrates, and also clerk to the guardians of the Bedale Union, in the room of Mr. Charles Thomas Herring, deceased.

The Queen has been pleased to appoint John Hamilton Gray, Esq., to be Attorney-General, and John Campbell Allen, Esq., to be Solicitor-General for the province of New Brunswick.

Algernon Montagu, Esq., has been appointed a member of the council of the colony of Sierra Leone.—From the *London Gazette* of Aug. 22.

## NEW MEMBERS OF PARLIAMENT.

Charles Napier Sturt, Esq., for Dorchester, in the room of Henry Gerard Sturt, Esq., who has accepted the office of Steward of Her Majesty's Chiltern Hundreds.

The Honourable William George Boyle for Frome, in the room of Richard Edmund St. Lawrence Boyle (commonly called Viscount Dungarvon), now Baron Boyle, called up to the House of Peers.

Henry Gerard Sturt, Esq., for the county of Dorset, in the room of the Right Hon. George Bankes, deceased.

Charles Paget, Esq., for Nottingham, in the room of the Right Hon. Edward Strutt, who has accepted the office of Steward of her Majesty's manor of Hempholme, in the county of York.

## PROROGATION OF PARLIAMENT.

It is this day (21st August) ordered by her Majesty in council that the Parliament, which stands prorogued to Tuesday, the 7th day of October next, be further prorogued to Thursday, the 18th day of November next.

## REVISION OF LIST OF VOTERS FOR FINSBURY.

Mr. Macqueen has appointed Wednesday, the 8th of October, at the Lords Justices' Court, Lincoln's Inn, for the revision of the List of Voters for the borough of Finsbury.

## CHANCERY ADHESIVE STAMPS.

In pursuance of the order of the Right Honourable the Lord High Chancellor, dated the first day of August, 1856 (page 256 *ante*), the following new Chancery adhesive stamps will be issued, viz.:—8d., 6d., 1s., 1s. 4d., 1s. 8d., 2s., 2s. 8d., 3s., 4s., 5s., 7s., 8s., 10s., 14s., and 20s.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

*Ley v. Ley.* July 17, 1856.

## APPOINTMENT OF PAID RECEIVER—APPEAL FROM VICE-CHANCELLOR.

*The Vice-Chancellor Stuart appointed in chambers a paid receiver: Held, that no appeal laid therefrom, in order to appoint some of the parties who were willing to act without salary.*

There was a motion, by way of appeal, from an order of Vice-Chancellor Stuart in chambers, appointing a paid receiver in this suit.

*Malins and Karalake* in support, asked for the appointment of certain of the parties to the suit, who would act without salary.

*Cairns and Toller* contra.

The Lords Justices said that the discretion of the Vice-Chancellor, as to the choice of a receiver, was not the subject of appeal, and the motion was accordingly dismissed with costs.

*In re Culhame, ex parte Culhame.* July 18, 1856.

## BANKRUPT—CERTIFICATE, WITH CONDITION ANNEXED—SUSPENSION.

Held, reversing the decision of Mr. Commissioner Fonblanque, that in lieu of annexing a condition under the 12 & 13 Vic. c. 186, s. 198, that a certificate is not to protect the bankrupt's after-acquired property—except a certain dividend were paid, the certificate will be suspended, with protection, and with liberty to apply.

*Swanston and Bagley* appeared in support of this appeal from Mr. Commissioner Fonblanque, granting a certificate of the second class to this bankrupt, who was a surgeon and apothecary, to which was annexed the condition that it should not be available for his after-acquired estate until he should have paid to all his creditors a dividend of five shillings in the pound.

By the 12 & 13 Vic. c. 186, s. 198, it is enacted that "forthwith after the bankrupt shall have passed his last examination, the court shall appoint a public sitting for the allowance of his certificate, &c.; and the court, having regard to the conformity of the bankrupt to the law of bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require."

*Bacon and Speed* contra.

The Lords Justices (without calling on *Shebbeare* for the assignees) said that it was inexpedient as a general rule to annex a condition to a certificate that it should not, wholly or to any limited extent, protect the bankrupt's after-acquired property. It was better under such circumstances to suspend the certificate, with protection, and give liberty to apply. The order of the court was, therefore, discharged, and the certificate suspended with protection, but with leave to apply either to this court or to the commissioner.

## Master of the Rolls.

*In re Turner, ex parte Burton and others.* August 1, 1856.

## ATTORNEYS AND SOLICITORS' ACT—TAXATION OF BILL OF COSTS UNDER S. 88 BY THIRD PARTY.

Held, that in order that a third party may obtain an order to tax a solicitor's bill of costs under the 6 & 7 Vict. c. 78, s. 88, it is not necessary to shew pressure, but merely that some of the items are excessive and improper.

It appeared that under a deed of compromise of a suit instituted by Mr. Bruce (of whom the respondent Mr. Turner was solicitor) against the petitioners, they covenanted to pay the costs, charges, and expenses, as between solicitor and client, properly incurred by Mr. Bruce in instituting such suit, or in any way relating thereto, or otherwise in the discharge of his duty as trustee under the marriage settlement of Mr. and Mrs. Burton (two of the present petitioners). The bill of costs, which had previously sent to the petitioners' solicitor, was paid by Mr. Bruce, who brought an action to recover the amount against the other petitioner. This gentleman paid the same, and this petition was presented for a taxation under the 6 & 7 Vict. c. 78, s. 88, on the ground that certain items were excessive and improper, and for the repayment to him of such sum as should be found to have been paid in excess.

By that section it is enacted that "where any person, not the party chargeable with any such bill within the meaning of the provisions hereinbefore contained, shall be liable to pay or shall have paid such bill either to the attorney or solicitor, his executor, administrator or assignee, or to the party chargeable with such bill as aforesaid, it shall be lawful for such person, his executor, administrator, or assignee, to make such application for a reference for the taxation and settlement of such bill as the party chargeable therewith might himself make; and the same reference and order shall be made thereupon, and the same course pursued in all respects, as if such application was made by the party so chargeable with such bill as aforesaid: provided always, that in case such application is made when, under the provisions herein contained, a reference is not authorised to be made except under special circumstances, it shall be lawful for the court or judge to whom such application shall be made to take into consideration any additional special circumstances applicable to the person making such application, although such circumstances might not be applicable to the party so chargeable with the said bill as aforesaid, if he was the party making the application."

*Stiffe* in support; *Higgins* contra.

The Master of the Rolls said that where a third party paid money to his solicitor, and was afterwards repaid by the person liable, the question of pressure did not arise, but it was sufficient if some of the items were, as the petitioners contended was the case here, excessive and improper.

After having read the affidavits, his Honour directed a taxation.

## Vice-Chancellor Kindersley.

*In re Newbolt's Trust, ex parte Mainland and Wife.*

July 11, 1856.

## MARRIAGE SETTLEMENT—CONSTRUCTION—"OR OTHERWISE"—AFTER-ACQUIRED PROPERTY.

*Under a will the petitioner was entitled, together*

with her brother and two sisters, to a share in a fund subject to the life estate of their mother, and with benefit of survivorship, payable at twenty-one. She married, and all her share (subject to the life estate), and all and every other parts or shares to which she should become entitled under the will, "or otherwise," was settled upon certain trusts. Her brother attained twenty-one, and died before the tenant for life, intestate, and she became entitled as next of kin to a part of his estate. Held, that this was not subject to the trusts of the settlement, as she took it as next of kin, and not under the will.

THE testator, by his will, gave a sum of money in trust to pay the interest, when invested, to his wife for life, and at her death to his son and three daughters equally, to be payable on their attaining the age of twenty-one, with benefit of survivorship. The widow and all the children survived the testator. It appeared that one of his daughters (the present petitioner) married, and that by her settlement all her one equal fourth part or share (subject to her mother's life estate), and all and every other part or share,

parts or shares, to which she, or her intended husband in her right, should become entitled under or by virtue of her father's will, or any appointment to be made by her mother, "or otherwise," was conveyed to the trustees of the settlement upon the trusts thereof. The son attained twenty-one, but predeceased his mother, the tenant for life, unmarried and intestate, and administration of his estate was granted to the second sister. The petitioner's husband had died, and she had married again.

The question was now raised on this petition presented by her and her husband for payment of her share, as one of the next of kin of her brother's estate, whether such share was subject to the trusts of the settlement.

*Baily and Wickens* in support; *Glaes and Erskine* for the trustees of the settlement.

The *Vice-Chancellor* said that the petitioner took such share not under the will, but as next of kin to her brother, and that although it might be part of the original fund, she had not acquired it as such. An order would accordingly be made as prayed.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### Scotch Appeals to the House of Lords.

#### ACQUESCENCE.

See *Railway Clauses (Scotland) Act*, 2.

#### AGREEMENT.

*Construction—Water Company.*—Upon a contract by a water company to supply a town with "pure and wholesome water" at a certain rate of charge in consideration of the privilege to do so exclusively; the company insisted that they were entitled to prevent the use of salt water from the sea, and for that purpose sought an interdict or injunction, which however was refused. The refusal confirmed by the House.

Difficulties of Lord St. Leonards in concurring with this decision.

*Shaw's Water Company v. Magistrates, &c., of Greenock*, 2 Macq. 151.

And see *Railway*, 4.

#### APPEAL.

1. *Against a judgment merely applying verdict.*—An appeal lies wherever a judgment upon matter of law is pronounced. And, therefore, when the court applies a verdict, by repelling a party's claim, the thing so done by the court is to all intents and purposes a judgment within the meaning of the jury statutes, so as to admit of an appeal to the Lords. Lord St. Leonards dissents. *Morgan v. Morris*, 2 Macq. 342.

2. *Practice.*—Opinion by anticipation expressed by the Lords in order to prevent further contest between the parties.

Remarks by Lord Brougham upon the question: How far in a case not enumerated as appropriate for jury trial an appeal will lie against an interlocutor sending it to such trial? *Walker v. Stewart*, 2 Macq. 424.

#### APPORTIONMENT ACT.

4 & 5 Wm. 4, c. 22—*Executor and heir of entail.*—A Scotch tenant in tail, though in legal contemp-

lation an owner or fiart, is, nevertheless, within the meaning and operation of the Apportionment Act. *Baile v. Lockhart*, 2 Macq. 258.

#### CODICIL.

*Construction—Words held insufficient to cut down a fee into a life-rent.*—Where by a codicil to the will of the testatrix an estate in fee simple was constituted in A., a subsequent codicil, merely saying that B. should be the successor of A., was held not to cut down into a life-rent the fee simple of A. *O'Reilly v. Baroness Sempill*, 2 Macq. 288.

#### DAMAGES.

See *Railway*, 1.

#### DEBTS AND DEEDS.

See *Entail*, 2.

#### DEED OF REVOCATION.

*Executed under a power taking off fetters—Law of death-bed.*—The law of death-bed does not apply to a deed of revocation executed under a power taking off fetters, but creating no new estate.—*Miller v. Marsh*, 2 Macq. 284.

#### ENTAIL.

1. *Question of Registration under the Entail Act, 1886, c. 22.*—A deed of strict entail, whereby the maker, reserving himself a life-rent merely, calls to the succession in the first place his eldest son and the heirs male of his body, whom failing, a series of other heirs. The deed is recorded in the books of session. Afterwards the maker presents a petition for authority to register the entail in the proper register of entails, but in such petition represents the entail as being in favour of himself and the heirs male of his body. Upon the ground of this error: *Objection*, that the authority to register was bad; and that the registration pursuant thereto was insufficient under the act. *Objection overruled.*

In the resolute clause were the words "in case the said J. S. shall fail or neglect to pay or perform

the said conditions;" but in the Register the words were different, being "shall fail to neglect or obey or perform." Reasoning upon which this discrepancy held immaterial.

Under a power reserved, the maker of the entail revoked the nomination of an heir. *Objection* by a creditor of the heir in possession, that the deed of revocation was not recorded in the Register of Entails. *Answer*, that the heir displaced was an heir who could not have come in until after the heir in possession.

*Held* by the Lord Chancellor that the entail stood upon both instruments (the deed of creation and the deed of partial revocation), and therefore that both must appear upon the register.

Dissent by Lord St. Leonards agreeing with the court of session. Decision below consequently affirmed.—*Norton v. Stirling*, 2 Macq. 205.

2. *Debts and Deeds—Prohibition—Irritancy.*—The words "debts and deeds" in the irritant clause held to refer only to the "debts and deeds" mentioned in the immediately antecedent portion of the prohibitory clause, and not to the "debts and deeds" mentioned in the prior members of that clause.

*Canon of construction per the Lord Chancellor.*—In construing irritant clauses, the presumption is in favour of liberty, and therefore if the words admit of two readings, and the result of one is to give effect to the fetters, that which does not give effect to the fetters is that which ought to be preferred.

*Canon of construction per Lord St. Leonards.*—It is not the rule that in a Scotch entail you may not give to the words their natural import, but the rule is, that if words are used in an ambiguous or uncertain sense you cannot fix upon them a sense which will take from them the freedom which the other parts of the entail may have given.—*Ogilvy v. Earl of Airlie*, 2 Macq. 260.

3. *Deed of Construction.*—An entail made in 1726 was supposed to be binding and indefeasible. In 1821 the heir in possession directed his testamentary trustees to convey to those succeeding him in the estate certain fee-simple lands, and the conveyance was to be expressly "under all the conditions, provisions, and clauses prohibitory, irritant, and resolutive of the said entail, so far as the same might be applicable, and so as to form a valid and effectual entail according to the law of Scotland." The testator died in 1848. In 1849 the House of Lords decided that the said entail was defective.

*Held*, that the conveyance to be executed by the trustees should be so framed as to "make a valid and effectual entail;" and, therefore, was not to follow the original entail where it had been found to be defective.

Dissent by Lord St. Leonards.—*Graham v. Stewart*, 2 Macq. 295.

And see *Apportionment Act*.

#### HALF BLOOD.

See *Will*.

#### INTERPLEADER SUIT.

See *Issue*.

#### ISSUE.

*Directing Interpleader suit—Verdict—Uncertainty.*—In a multiple pinding or interpleader suit, if a question arises which of two persons is heir or next of kin, the court will put the matter in a train of inquiry by directing an issue, and upon that issue the party asserting title will have cast upon him the duty not only of proving his own case, but of

negating that of others. Two issues were directed. The first was in these words: "Whether the pursuer Alexander Morgan is nearest and lawful heir of John Morgan, deceased?" And the second was as follows: "Whether the pursuer James Morgan is, along with the said Alexander Morgan, next of kin of the said John Morgan, deceased?" The jury returned a verdict, "They find the case of the pursuers is not proven." The court of session thereupon gave judgment repelling the claims of Alexander and James Morgan. This decision reversed on the ground that the verdict by reason of its uncertainty, not showing whether the jury considered that the pursuers had failed on both, or only on one of the issues, did not warrant, and could not be the foundation of any judgment. Lord St. Leonards dissenting. *Morgan v. Morris*, 2 Macq. 342.

#### JURISDICTION.

*After a reference—How far resumable by the court.*—When on the eve of trial the parties agree to a reference, the court cannot afterwards, except by express consent, supersede the agreement and assume jurisdiction. *Walker v. Stewart*, 2 Macq. 44.

#### LEVEL CROSSING.

See *Railway*, 1.

#### LIFE RENT.

See *Codicil*.

#### NEAREST RELATIONS.

See *Will*.

#### POOR LAW ACT.

8 & 9 Vic. c. 83.—*Assessment of railway company.*—Stations, station-houses, and buildings accessory thereto are, for the purposes of poor law assessment in Scotland, to be regarded as parts of the railway, and the value is to be apportioned among all the parishes on the line of the railway.—*Adams v. Edinburgh and Glasgow Railway Company*, 2 Macq. 381.

#### PROHIBITION.

See *Entail*, 2.

#### RAILWAY.

1. *Level crossing—Damages.*—Damages are not recoverable for stoppages and other mere inconveniences incident to the crossing of a public road by a railway on the level under the sanction of parliament.

A level crossing in such a case, is a grievance to be endured without complaint by private persons from a consideration of the benefit gained by the public.

Hence, when a railway passes within a few yards of a gentleman's lodge, across a public road forming the chief access to his residence,—although he was liable to constant stoppages by the closing of the gates on the level crossing,—although the passing of trains frightened his horses and terrified his visitors, "particularly ladies:" *Held*, by the House of Lords (reversing the decision of the court of session) that these annoyances did not ground a claim of damages against the railway company.

*Held*, likewise, that the inconvenience felt in such a case is one to which all the Queen's subjects are exposed, and for which no particular or individual remedy exists.

*Held*, moreover, that it is a mistake to regard the proximity of a level crossing as injurious to an estate or residence within the meaning of railway legislation. *Caledonian Railway Company v. Ogilvy*, 2 Macq. 229.

(To be concluded in our next.)

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, SEPTEMBER 6, 1856.

### OBJECTIONS TO THE APPOINTMENT OF PUBLIC PROSECUTORS AND DISTRICT ATTORNEYS.

A SELECT committee of the House of Commons was appointed to consider the proposition for appointing public prosecutors and other officers for the administration of the criminal law. Many witnesses were examined, and, after several meetings, the committee recommended—

1st. That district agents be appointed to prepare and conduct prosecutions, such districts being co-extensive with the jurisdiction of the county courts.\*

These district agents to be attorneys of seven years' standing (appointed by the Home Secretary). They are to abstain from private practice, having an annual salary of £700, and a clerk at £80.

2nd. That on each circuit a counsel of ten years' standing be appointed to advise the district agent in *cases of difficulty*, and that such counsel conduct the prosecution at the trial.

3rd. That in *ordinary cases* the present practice of employing counsel be retained, the choice of such counsel being left to the district agents.

4th. The advising counsel are to be appointed by the Attorney-General, and remunerated by an annual salary of £500, with liberty to practise. The other counsel, selected by the district agent, to be paid by fees.

5th. It is left open, however, to private prosecutors to continue the present practice by employing their own attorneys and counsel, giving notice to the district agent, who may apply to the court for leave to take up the prosecution.

6th. Where the defendant has not been taken before a magistrate, the Attorney-General's leave must be obtained to prefer an indictment.

Such is the substance of the conclusions at which the select committee arrived; and it appears that under a reference from the Lord Chancellor, Mr. Greaves, Q.C., has prepared an elaborate "Report on Criminal Procedure," which has just been printed, containing

(*inter alia*) various objections to the appointment of public prosecutors and district attorneys in the manner proposed by the select committee. It is obvious, indeed, that the establishment of public prosecutors is liable to serious objections on the part of the *Bar*, and the election of district agents is equally objectionable in regard to the *Attorneys*. At the same time both classes of appointments seem ill calculated to benefit the *public*, or to promote a better administration of the criminal law than now prevails. We shall avail ourselves of the important points urged by Mr. Greaves.

#### I.—OF PUBLIC PROSECUTORS.

The objections to the proposition that official counsel should be regularly appointed to conduct all prosecutions in every criminal court are:—

1. That such a measure is wholly uncalled for, as there is no pretence for saying that, where an attorney has been employed and the case properly prepared for trial, the prosecutions are not well and satisfactorily conducted at present. Where prosecutions fail in court, they fail either through the want of proper preliminary proceedings, or through the non-existence of sufficient evidence.

2. Prosecutions at present are, for the most part, especially where they are important, conducted by some of the most rising men on circuit, who are stimulated to active exertion by competition, and the hope for distinguishing themselves. Whereas a public prosecutor, secure in his place, would have no such motives for exertion, and would naturally be liable to become careless and indifferent, and as years passed on would become through age and infirmity, unfit for the energetic performance of his duties long before there was any reasonable ground for removing him.

3. It can hardly be supposed that any first rate counsel would ever accept the office; its duties would preclude his attending to civil business on circuit altogether, and consequently any one taking such office must give up all hopes of ever becoming a leader of his circuit, or rising to the head of his profession. The result would be that the office would fall into the hands of second-rate counsel, who would not unfrequently have to oppose the ablest men on the circuit as counsel for the prisoners.

4. The criminal business, as a whole, would be an extremely heavy charge on any one individual; and, without affirming that it would be impossible for any one individual to conduct all the criminal business on a circuit, it cannot be doubted that he

\* Is this for the purpose of bringing the judges and clerks of the county courts in aid of the execution of the act?



must undergo a very great amount of labour if he did. Besides, it frequently happens that two or three courts are trying prisoners at the assizes at the same time, and it consequently happens that there is a difficulty in arranging the business to be taken by each court, owing to one counsel being engaged in several cases. It is obvious that this difficulty would be greatly enhanced by having a single counsel to conduct all cases; and, if he had assistants, it would sometimes happen that they would not have sufficient time to master the cases, as is often the case now where one counsel holds a brief for another counsel.

On these several grounds it would seem that prosecutions would, in all probability, not be so well conducted by a public prosecutor as they are at present.

The appointment of a public prosecutor would greatly tend to discourage the study of the criminal law. At present it is much to be feared that due attention is not paid to the proper acquisition of a thorough knowledge of that law.

Still many gentlemen who have to make their way by their own exertions do devote considerable attention to the criminal law, and attend the criminal courts, in the hopes that, like many great men who heretofore have adorned or now do adorn the bench, they may rise to be leaders of sessions, or of the crown court at the assizes, and from thence to the higher positions in the profession. But as soon as one counsel is appointed to conduct all the prosecutions this stimulus would be all but at an end; for every one knows how little inducement the defence of prisoners holds out, and how much mental anxiety it causes, in comparison with the prosecution of prisoners.

Such an appointment would at once destroy a great number of interests which now exist. Numbers of barristers are there who by regular attention and devotion to the crown court have, after years of laborious industry, raised themselves to be leaders of such courts, and are reaping the reward of their toil; whilst others are steadily following in their course, and some of them are gradually by these means working their way into civil business, and may be said to have gained a position in the profession which may ultimately lead to the highest ranks in it. But if a public prosecutor be appointed, these gentlemen will at once be deprived of all the rewards of their labour as far as they result from the conducting of prosecutions, and the very stepping-stones which their industry has won will be struck from under their feet.

Nothing is more essential to the well conduct of a court than a good attendance of an able and independent bar. Appoint a public prosecutor, and your criminal courts at the assizes will present the novel appearance of the judge, the public prosecutor, and perhaps some two or three defenders of prisoners, but no other counsel; and, as to the sessions, where the criminal business constitutes nearly the whole of the proceedings, counsel will generally cease to attend them, for there will be no chance of their obtaining business enough to pay their expenses.

The general rule at present is, that each prosecutor shall, if he please, select his own counsel and regulate the management of the case. And this rule is founded upon the common law, for by that law no person can sustain an action for an injury done to him by a felonious act until he has done his best to

prosecute and convict the offender. Besides which, by the common law, restitution of stolen goods could be obtained upon an appeal, which was the suit of the party (8 Inst. 242), but not on an indictment, because it is the suit of the king. The 21 Hen. 8. c. 11, however, gave restitution of stolen goods where any felon was attainted by reason of evidence given by the prosecutor, or by any other by his procurement. And the 7 & 8 Geo. 4, c. 29, s. 57, has extended this provision. So in some cases of forcible entry, restitution of the premises may be obtained. It is clear, therefore, that in such cases the prosecutor has a right to direct the prosecution. It would require strong reasons to justify the taking away of this right, and it cannot be doubted that there are many cases in which the prosecutor would afford no assistance whatever to the prosecution, if he were deprived of the option of selecting his own counsel. Many cases there are where a prosecutor will, in confidence, reveal the secrets of the mode in which his business is carried on to an attorney or counsel of his own selection, where he would rather not institute a prosecution at all, than reveal them to a public officer.

In considering this question it should also be remembered that it is a very different thing to determine what, in the first instance, would be the best to be done, from determining what is best to be done after a certain system has been long in operation, and the public have been impressed with the opinion that they have certain rights under it.

And it may well be that prosecutors, impressed with the idea of their right to conduct prosecutions, might, in England be indignant at that right being taken away; whilst prosecutors in Scotland may feel no annoyance at a public prosecutor, because in each country the public are impressed with the opinion that each system is right, and have been bred up from their childhood with such system in operation.

Juries are no favourers of prosecutions carried on by the Government; and it is extremely questionable whether they would look with even minds upon a public prosecutor. Nor is it difficult to conceive that, as in the instance of other public functionaries, so in the case of a public prosecutor, feelings might be excited and opinions might be entertained which might tend to prevent his services being beneficial to the public. At present if a counsel proves obnoxious the result is that another is employed.

So many objections present themselves to the appointment of a public prosecutor, independently of the question as to how far such large additional patronage should be given to the Crown, or the Ministry, and of the question how such patronage, if given, would be likely to be exercised, that it seems unnecessary to do more than to suggest that such questions would deserve consideration.

## II.—OF DISTRICT ATTORNEYS.

With regard to the appointment of district attorneys to conduct all prosecutions in England, there appear to be many objections—

1. There seems no reason to doubt that the placing all prosecutions in the hands of any district attorney is neither called for by any necessity, nor would be productive of any advantage, and, on the contrary, would have a tendency to prevent prosecutors, in

powers of leasing, in conformity with the provisions of this act, shall be vested in trustees in manner hereinafter mentioned.

8. When application is made to the court, either to approve of a particular lease, or to vest any powers of leasing in trustees, the court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorised.

9. When a particular lease or contract for a lease has been approved by the court, the court shall direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use, or otherwise, as the court shall direct.

10. Where the court shall deem it expedient that any general powers of leasing any settled estates shall be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement or in any other persons; and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use, or otherwise, as the court shall direct; and in every such case the court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power, and the court may also authorise the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

11. It shall be lawful for the Court of Chancery in England, so far as relates to estates in England, and for the Court of Chancery in Ireland, so far as relates to estates in Ireland, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this act contained, from time to time to authorise a sale of the whole or any parts of any settled estates or of any timber (not being ornamental timber) growing on any settled estates; and every such sale shall be conducted and confirmed in the same manner as by the rules and orders of the court for the time being is or shall be required in the sale of lands sold under a decree of the court.

12. When any land is sold for building purposes it shall be lawful for the court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the court shall approve.

13. On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants, or submit to any restrictions which the court may deem advisable.

14. It shall be lawful for the Court of Chancery in England, so far as relates to estates in England, and for the Court of Chancery in Ireland, so far as relates to estates in Ireland, if it shall deem it

proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not; and the court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to and vested in any other trustees, upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the court shall be deemed advisable.

15. On every sale or dedication to be effected as herein-before mentioned the court may direct what person or persons shall execute the deed of conveyance; and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication, and so as to operate (if necessary) by way of revocation and appointment of the use, or otherwise as the court shall direct.

16. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life or any greater estate, may apply to the court, by petition in a summary way, to exercise the powers conferred by this act.

17. Subject to the exception contained in the next section, every application to the court must be made with the concurrence or consent of the following parties; namely,

Where there is a tenant in tail under the settlement in existence, and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail then the first of such tenants in tail, and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail;

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

18. Provided, nevertheless, that unless there shall be a person entitled to an estate of inheritance whose consent or concurrence shall have been refused or cannot be obtained, it shall be lawful for the court, if it shall think fit, to give effect to any petition, subject to and so as not to affect the rights, estate, or interest of any person whose consent or concurrence has been refused or cannot be obtained, or whose rights, estate or interest ought in the opinion of the court to be excepted.

19. Notice of any application to the court under this act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who in the opinion of the court ought to be so served, unless the court shall think fit to dispense with such notice.

20. Notice of any application to the court under

this act shall be inserted in such newspapers as the court shall direct, and any person or body corporate, whether interested in the estate or not, may apply to the Court of Chancery by motion for leave to be heard in opposition to or in support of any application which may be made to the court under this act; and the court is hereby authorised to permit such person or corporation to appear and be heard in opposition to or in support of any such application, on such terms as to costs or otherwise, and in such manner as it shall think fit.

21. The court shall not be at liberty to grant any application under this act in any case where the applicant, or any party entitled, has previously applied to either House of Parliament for a private act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the bill may have been referred.

22. The court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this act shall be placed on the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the court to be practicable and expedient, for preventing fraud or mistake.

23. All money to be received on any sale effected under the authority of this act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may if the court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same shall be paid into the Bank of England or Ireland, as the case may be, to the account of the Accountant General of the Court of Chancery, *ex parte* the applicant in the matter of this act, and in either case such money shall be applied as the court shall from time to time direct to some one or more of the following purposes (namely),

The purchase or redemption of the land tax, or the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

The payment to any person becoming absolutely entitled.

24. The application of the money in manner aforesaid may, if the court shall so direct, be made by the trustees (if any) without any application to the court, or otherwise upon an order of the court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

25. Until the money can be applied as aforesaid, the same shall be from time to time invested in Exchequer Bills, or in Three per Centum Consolidated Bank Annuities, as the court shall think fit; and the interest and dividends of such Exchequer Bills or Bank Annuities shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

26. The court shall be at liberty to exercise any of the powers conferred on it by this act, whether the court shall have already exercised any of the powers conferred by this act in respect of the same

property, or not; but no such powers shall be exercised if an express declaration or manifest intention that they shall not be exercised is contained in the settlement, or may reasonably be inferred therefrom, or from extrinsic circumstances or evidence: Provided always, that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the court from exercising any of the powers conferred by this act, if it shall think that the powers contained in the settlement ought to be extended.

27. Nothing in this act shall be construed to empower the court to authorise any lease, sale, or other act beyond the extent to which in the opinion of the court the same might have been authorised in and by the settlement by the settlor or settlor.

28. After the completion of any lease or sale or other act, under the authority of the court, and reporting to be in pursuance of this act, the same shall not be invalidated on the ground that the court was not hereby empowered to authorise the same; except that no such lease, sale, or other act shall have any effect against any person whose consent was in or consent to the application ought to have been obtained, and was not obtained.

29. It shall be lawful for the court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement, and subject to the same limitations; and the court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the court shall direct.

30. The Lord Chancellor of Great Britain with the advice and assistance of the English Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the vice-chancellors, or of any two of them, so far as relates to proceedings in England, and the Lord Chancellor of Ireland, with the advice and assistance of the Irish Master of the Rolls, and of the Lord Justice of the Court of Appeal in Chancery in Ireland, or of any two of them, so far as relates to proceedings in Ireland, may, if he shall think fit, from time to time make general rules and orders for carrying the purposes of this act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the court in respect of the matters to which this act relates, and for regulating the fees and allowances to all officers and solicitors of the court in respect of such matters; and such rules and orders may from time to time be rescinded or altered by the like authorities respectively; and all such rules and orders shall take effect as general orders of the court.

31. All general rules and orders made as aforesaid shall, immediately after the making and issuing thereof, be laid before both Houses of Parliament; if Parliament be then sitting, or if Parliament be not then sitting, within twenty-one days after the next meeting thereof; and it shall be lawful for either of the Houses of Parliament, by any resolution passed within thirty-six days after such rules or orders have been laid before it, to resolve that the same or any part thereof ought not to continue in force, and thereupon the same shall cease to be binding.

32. It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life,

or for a term of years determinable with his life, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife, who is seised in fee, without any application to the court, to demise the same or any part thereof, except the principal mansion house and the demesnes thereof, and other lands usually occupied therewith, from time to time, for any term not exceeding twenty-one years to take effect in possession; provided, that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on non-payment for a period not less than twenty-eight days of the rent thereby reserved, and on non-observance of any of the covenants or conditions therein contained; and provided a counterpart of every deed of lease be executed by the lessee.

33. Every demise authorised by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement, if the estates be settled, and in the case of unsettled estates against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

34. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this act.

35. The act of the thirty-second year of King Henry the eighth, chapter twenty-eight, intituled "Leases to enjoy the farm against the tenants in tail," and the act of the Parliament of Ireland of the tenth year of King Charles the First, session three, chapter six, intituled "An Act that Lessees shall enjoy their Farms against Tenants in Tail or in right of their Wives, &c.," are hereby repealed, except so far as relates to leases made by persons having an estate in the right of their churches.

36. All powers given by this act, and all applications to the court under this act, and consents to such applications, may be exercised, made, or given by guardians on behalf of infants, and by committees or behalf of lunatics, and by assignees of bankrupts or insolvents: Provided nevertheless, that in the cases of infant or lunatic tenants in tail no application to the court or consent to any application may be made or given by any guardian or committee without the special direction of the court.

37. Where a married woman shall apply to the court, or consent to an application to the court, under this act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independ-

ently of her husband, or not; and no clause or provision in any settlement restraining anticipation shall prevent the court from exercising, if it shall think fit, any of the powers given by this act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

38. The examination of such married woman shall be made either by the court or by some solicitor duly appointed by the court for that purpose, who shall certify, under his hand, that he has examined her apart from her husband, and is satisfied that she is aware of the nature and effects of the intended application, and that she freely desires to make or consent to the same.

39. Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants.

40. Nothing in this act shall be construed to create any obligation at law or in equity on any person to make or consent to any application to the court, or to exercise any power.

41. For the purposes of this act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor, or otherwise howsoever, to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

42. Provided always, that nothing in this act shall authorise any sale or lease beyond the term of twenty-one years of any settled estates in which, under the act of the thirty-fourth and thirty-fifth years of King Henry the Eighth, chapter twenty, "to embar feigned recovery of lands wherein the King is in reversion," or under any other Act of Parliament, the tenants in tail are restrained from barring or defeating their estates tail, or where the reversion is vested in the crown.

43. Nothing in this act shall authorise the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor.

44. The provisions of this act shall extend to all settlements, whether made before or after it shall come in force, except those as to demises to be made without application to the court, which shall extend only to settlements made after this act shall come in force.

45 This act shall not extend to Scotland.

46. This act shall come in force on the first day of November 1856.

## INCORPORATED LAW SOCIETY.

ANNUAL REPORT OF THE COUNCIL,  
24th June, 1856.

[Concluded from page 804].

### III. PRACTICAL PROCEEDINGS.

*Proposed new law courts and offices.*—The Council refer to their report of last year, in which they stated the measures which they had taken for the purpose of promoting this desirable object. They have called the attention of Sir Benjamin Hall, the present chief commissioner of works and buildings,

this act shall be inserted in such newspapers as the court shall direct, and any person or body corporate, whether interested in the estate or not, may apply to the Court of Chancery by motion for leave to be heard in opposition to or in support of any application which may be made to the court under this act; and the court is hereby authorised to permit such person or corporation to appear and be heard in opposition to or in support of any such application, on such terms as to costs or otherwise, and in such manner as it shall think fit.

21. The court shall not be at liberty to grant any application under this act in any case where the applicant, or any party entitled, has previously applied to either House of Parliament for a private act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the bill may have been referred.

22. The court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this act shall be placed on the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the court to be practicable and expedient, for preventing fraud or mistake.

23. All money to be received on any sale effected under the authority of this act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may if the court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same shall be paid into the Bank of England or Ireland, as the case may be, to the account of the Accountant General of the Court of Chancery, *ex parte* the applicant in the matter of this act, and in either case such money shall be applied as the court shall from time to time direct to some one or more of the following purposes (namely),

The purchase or redemption of the land tax, or the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

The payment to any person becoming absolutely entitled.

24. The application of the money in manner aforesaid may, if the court shall so direct, be made by the trustees (if any) without any application to the court, or otherwise upon an order of the court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

25. Until the money can be applied as aforesaid, the same shall be from time to time invested in Exchequer Bills, or in Three per Centum Consolidated Bank Annuities, as the court shall think fit; and the interest and dividends of such Exchequer Bills or Bank Annuities shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

26. The court shall be at liberty to exercise any of the powers conferred on it by this act, whether the court shall have already exercised any of the powers conferred by this act in respect of the same

property, or not; but no such powers shall be exercised if an express declaration or manifest intention that they shall not be exercised is contained in the settlement, or may reasonably be inferred therefrom, or from extrinsic circumstances or evidence: Provided always, that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the court from exercising any of the powers conferred by this act, if it shall think that the powers contained in the settlement ought to be extended.

27. Nothing in this act shall be construed to empower the court to authorise any lease, sale, or other act beyond the extent to which in the opinion of the court the same might have been authorised in and by the settlement by the settlor or settlor.

28. After the completion of any lease or sale or other act, under the authority of the court, and purporting to be in pursuance of this act, the same shall not be invalidated on the ground that the court was not hereby empowered to authorise the same; except that no such lease, sale, or other act shall have any effect against any person whose concurrence in or consent to the application ought to have been obtained, and was not obtained.

29. It shall be lawful for the court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement, and subject to the same limitations; and the court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the court shall direct.

30. The Lord Chancellor of Great Britain, with the advice and assistance of the English Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the vice-chancellors, or of any three of them, so far as relates to proceedings in England, and the Lord Chancellor of Ireland, with the advice and assistance of the Irish Master of the Rolls and of the Lord Justice of the Court of Appeal in Chancery in Ireland, or of any two of them, so far as relates to proceedings in Ireland, may, if he shall think fit, from time to time make general rules and orders for carrying the purposes of this act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the court in respect of the matters to which this act relates, and for regulating the fees and allowances to all officers and solicitors of the court in respect to such matters; and such rules and orders may from time to time be rescinded or altered by the like authorities respectively; and all such rules and orders shall take effect as general orders of the court.

31. All general rules and orders made as aforesaid shall, immediately after the making and issuing thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within twenty-one days after the next meeting thereof; and it shall be lawful for either of the Houses of Parliament, by any resolution passed within thirty-six days after such rules or orders have been laid before it, to resolve that the same or any part thereof ought not to continue in force, and thereupon the same shall cease to be binding.

32. It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life,

or for a term of years determinable with his life, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife who is seised in fee, without any application to the court, to demise the same or any part thereof, except the principal mansion house and the demesnes thereof, and other lands usually occupied therewith, from time to time, for any term not exceeding twenty-one years to take effect in possession; provided, that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impediment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on non-payment for a period not less than twenty-eight days of the rent thereby reserved, and on non-observance of any of the covenants or conditions therein contained; and provided a counterpart of every deed of lease be executed by the lessee.

32. Every demise authorised by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement, if the estates be settled, and in the case of unsettled estates against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

34. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this act.

35. The act of the thirty-second year of King Henry the eighth, chapter twenty-eight, intituled "lessees to enjoy the farm against the tenants in tail," and the act of the Parliament of Ireland of the tenth year of King Charles the First, session three, chapter six, intituled "An Act that Lessees shall enjoy their Farms against Tenants in Tail or in right of their Wives, &c.," are hereby repealed, except so far as relates to leases made by persons having an estate in the right of their churches.

36. All powers given by this act, and all applications to the court under this act, and consents to such applications, may be exercised, made, or given by guardians on behalf of infants, and by committees on behalf of lunatics, and by assignees of bankrupts or insolvents: Provided nevertheless, that in the case of infant or lunatic tenants in tail no application to the court or consent to any application may be made or given by any guardian or committee without the special direction of the court.

37. Where a married woman shall apply to the court, or consent to an application to the court, under this act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independ-

ently of her husband, or not; and no clause or provision in any settlement restraining anticipation shall prevent the court from exercising, if it shall think fit, any of the powers given by this act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

38. The examination of such married woman shall be made either by the court or by some solicitor duly appointed by the court for that purpose, who shall certify, under his hand, that he has examined her apart from her husband, and is satisfied that she is aware of the nature and effects of the intended application, and that she freely desires to make or consent to the same.

39. Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants.

40. Nothing in this act shall be construed to create any obligation at law or in equity on any person to make or consent to any application to the court, or to exercise any power.

41. For the purposes of this act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor, or otherwise howsoever, to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

42. Provided always, that nothing in this act shall authorise any sale or lease beyond the term of twenty-one years of any settled estates in which, under the act of the thirty-fourth and thirty-fifth years of King Henry the Eighth, chapter twenty, "to embair feigned recovery of lands wherein the King is in reversion," or under any other Act of Parliament, the tenants in tail are restrained from barring or defeating their estates tail, or where the reversion is vested in the crown.

43. Nothing in this act shall authorise the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor.

44. The provisions of this act shall extend to all settlements, whether made before or after it shall come in force, except those as to demises to be made without application to the court, which shall extend only to settlements made after this act shall come in force.

45 This act shall not extend to Scotland.

46. This act shall come in force on the first day of November 1856.

## INCORPORATED LAW SOCIETY.

### ANNUAL REPORT OF THE COUNCIL,

24th June, 1856.

[Concluded from page 804].

### III. PRACTICAL PROCEEDINGS.

*Proposed new law courts and offices.*—The Council refer to their report of last year, in which they stated the measures which they had taken for the purpose of promoting this desirable object. They have called the attention of Sir Benjamin Hall, the present chief commissioner of works and buildings,

to the subject, by an official communication; and it is to be hoped that, before long, the government will see the absolute necessity of providing proper accommodation for the courts and offices.

The Council having been informed that it was intended by the corporation of London to erect additional courts of nisi prius at Guildhall, they suggested that a room should be provided for attorneys attending the trial of causes, and in the construction of the courts, their suggestion will, they believe, be adopted.

*Practice of the bar.*—The attention of the Council was called to the transfer of a brief by one barrister to another, without the consent or knowledge of the attorney or his client; but eventually a satisfactory explanation was made to the attorney, and there was no attempt to assert the principle of a barrister's being at liberty to adopt such a course.

*Practice as to retainers.*—The members are aware of the rules relating to the retainer of barristers which were agreed to at a special general meeting of the members of the society on the 29th November, 1848, and that the Council are willing to settle any questions between solicitors coming within the scope of those rules. As only one question has been referred to them during the past year, it would seem that the practice is becoming settled.

*Usages of the profession.*—It is one of the advantages of the society, that questions arising between solicitors in the course of their practice, particularly in conveyancing matters, can be referred to the Council for their opinion on the general usage amongst members of the profession.

Those opinions are recorded as usages in a book kept in the secretary's office. During the past year many points have arisen to which the Council have given their attention. They do not, however, consider it to be within their province to decide questions arising between contending parties, except where both concur in a statement of facts, and agree to be bound by the decision of the Council; but where the subject involves a question of professional usage, they consider the members of the society entitled to their opinion upon such usage.

*New rules and orders.*—The rules and orders of court which have been printed for the society during the past year, and sent to the members, viz.

*In the Court of Chancery.*

80th Nov. 1855.—Entries in cause books at the Record Office to be written on decrees, orders, &c.

*In the common law courts.*

Summary Procedure on Bills of Exchange Act, 1855, 18 & 19 Vict. cap. 67.

11th Aug. 1855.—Common pleas at Lancaster.

*Register of judgments.*—Regulations as to searches.

*In the county courts.*

7th Nov. 1855.—Proceedings under Friendly Societies Act.

*Saturday half-holiday.*—The proposition which was noticed last year for closing legal business at 2 o'clock on Saturdays, in favour of which the Council received and supported a memorial signed by several hundred solicitors in the metropolis, has been somewhat modified on the intimation received from the judges: it is now limited by the common law courts to the service of process, which, if made after 2 o'clock on the Saturday, will be deemed to be served on the Monday.

The Lord Chancellor and the other equity judges have been requested to make a similar order, and it is expected it will soon be pronounced.

*Malpractice cases.*—The Council regret to state that they have been called upon to investigate several alleged cases of malpractice during the past year, and to institute proceedings thereon.

The mode of proceeding to strike attorneys off the roll, and the practice as to re-admissions, have been under the consideration of the Council, with a view to some proposed amendments which will be embodied in a memorial to the judges.

#### IV. LEGAL EDUCATION AND EXAMINATION OF ARTICLED CLERKS.

*Commissioners' report on inns of court and Chancery.—Proposed law university.*—The report of the commissioners on the Inns of Court and Chancery, dated 10th August, was published in December last, and with respect to the *Inns of Chancery* the commissioners state that they do not find that there exist any available funds of those societies for promoting the study of the law, and they are unable to fix upon them a legal liability to contribute to any professional purpose. The commissioners then proceed to the consideration of the *Inns of court*, and recommend that they should be united in a "University," with the power of conferring degrees in law, of which the constituent members shall be "the Chancellor of the University, barristers at law, and masters of law."

The Council are of opinion that a university confined to barristers and students of the inns of court, and from admission to which attorneys and solicitors are excluded, ought to be objected to on their behalf.

The members will recollect that the regulations of the inns of court which have been made within a comparatively recent period, are evidently designed to prevent the admission of attorneys and solicitors and their articled clerks into the inns of court, and the Council conceive that such regulations are injurious and unjust, and they can see no reason why the call of attorneys and solicitors should be delayed for so long a period as five years.

The Council are now engaged in considering the several suggestions which have been made to them for improving the mode of proceeding at the examination of articled clerks, and as to distinguishing, by some mark of approbation, those candidates who have shown especial merit.

#### V. GENERAL AFFAIRS OF THE SOCIETY.

*Completion of the south wing of the hall.*—The members are aware that, for the purpose of completing the original design of the hall, the society has acquired by purchase the buildings and ground on the south side of the present building, to the extent of between 60 and 70 feet, and comprehending the whole space between Chancery Lane and Bell Yard within that limit.

In 1853 the annual general meeting, on the recommendation of the Council, reduced the admission fee from £15 to £5. The result of this alteration has been that the number of admissions, which had for several previous years gradually decreased, has since increased, after deducting deaths and retirements, from 1801 to 1851, the present number of members.

The Council consider that the time has now arrived to complete the original design of the building, for the purpose of affording the additional accommodation which is urgently demanded by the large increase in the number of members and the extension of the business of the society, in the public

duties of examination and registration. The frontage required for this purpose is about 85 feet, which is rather more than half the extent of the societies property on the south side.

The houses on the site on which the new building is proposed to be erected are in such a dilapidated state, that they must, at an early period, either be pulled down and rebuilt, or a considerable sum expended on them; and the houses on the southernmost part of the society's property, not required for the extension, are in a tolerable state of repair.

The Council have consulted Mr. Hardwick, Jun., as architect, who has prepared the plans of the new buildings and alterations, copies of which have been placed in the hall for the inspection of the members.

The tender for the work has not yet been received, and it will be necessary to borrow the principal part of the amount on the security of the society's property, which is amply sufficient for the purpose.

*Advantages of additional building.*—The additional accommodation to be derived from the proposed new building may be stated as follows:—

1. The completion of the library by erecting a south wing corresponding with the one on the north side of the hall, and by a very material improvement in the library staircase.

2. The two offices next Chancery Lane, now occupied by the secretary and clerks, will be at the service of members as conference rooms.

3. Large and convenient offices will be placed on the additional site, for the despatch of the business of the society.

4. A corridor will be formed on the south side of the hall, leading to the Council room, the arbitration rooms, and secretary's office.

5. The present Council room may be used for arbitrations. Two other arbitration rooms are provided, and the new Council room will be placed on the additional site.

6. Twenty-one additional strong rooms will be provided, with a convenient office for the examination of deeds deposited in the strong rooms.

7. An open area on the new site will afford additional light and air to the library staircase and front vestibule.

*The state of the funds of the society* will appear by the auditors' account, which, as usual, has been laid for inspection in the secretary's office since the 15th April. It may be briefly stated here, that, out of the surplus income of the society, a further sum of £300 of the debt due to the bankers has been paid off; that the receipts for the year 1855 amount to £8,078. 8s. 11d., and the payments to £5,502. 5s. 6d.; and that in the present year a further sum of £500 has been paid out of the surplus income, in further reduction of the loan.

The act of 16 & 17 Vic. c. 68, reduced the annual certificate tax by one-fourth only, and if the tax had been entirely abolished, provision must have been made for the annual registration of all solicitors, for which a fee would have been payable to the society. As this object was not effected, the attention of the Council has since been directed to the propriety of providing other funds from the profession generally, for the purpose of relieving the society from the expenses paid or incurred out of its funds for objects in which the profession generally, and not the members of the society individually, are interested, and by the promotion of which they are benefitted. The fees hitherto received by the society for examination and registration, did not cover the expenses direct and incidental incurred in reference thereto.

The Council therefore deemed it right on the part of the society to submit to the judges the propriety of exercising their powers for increasing the fees of examination from £2. 2s. to £3. 8s., and for the registration, from 1s. 6d. to 2s. 8d. Their lordships have been pleased to order the fees to be increased accordingly.

*The library.*—Since the last annual meeting, about 400 volumes have been added to the collection of works in the library, exclusive of the proceedings, reports, returns, and other papers of the House of Commons.

The society is indebted to several authors and members of the society for their contributions to the library, and the club has also presented to it several periodical works during the year. Amongst the donations are a considerable number of old and scarce books upon various branches of law and practice; and the Council would suggest to the members, when they are clearing their shelves of old legal works which may appear to be of no immediate utility, that they should forward a list to the society, in order that any defects in the society's collection may be supplied. They would also call attention to the circular annually sent to the members, specifying the numbers of the *London Gazette* which are yet required to complete that extensive work.

The Council have also to acknowledge the contribution of copies of numerous local, personal, and private acts of Parliament, which have been made by the solicitors for the promoters, during the years 1853, 1854 and 1855; and though the collection of these acts are at present imperfect, the Council trust that, by the aid of the members and other solicitors who are engaged in Parliamentary business, the collection will ultimately be completed.

The members of the society having occasion frequently to refer to the acts and ordinances of her Majesty's colonies, the Council endeavoured to purchase a collection for the library, particularly those of recent date; but they have been unable to meet with any copy for sale; and they therefore, applied to the Colonial Office, for any duplicate or other copies of these acts and ordinances which could be spared, and the Council have been favoured with a communication to the effect, that in future the acts and ordinances will be supplied to the society.

*The lectures* delivered in the hall of the society comprised a course on equity and bankruptcy, by Mr. Humphry; on conveyancing by Mr. Baggallay, and on common law and criminal law, by Mr. Kerr, commencing in Michaelmas Term, and extending to the latter part of March. These lectures have been attended by a considerable number of the members, as well as by the Council in rotation, and by 172 students or articulated clerks.

The number of new members admitted during the year has been 78, and after deducting the deaths and retirements, the society now consists of 1284 town and 817 country members, making together 1551.

There have been no vacancies in the Council since the last meeting. The names of the members who go out of office in rotation have been placed up in the hall, in accordance with the bye-law, and they are eligible for re-election.

Although the society has of late largely increased in number the Council would remind the members, that it is desirable to enrol every respectable solicitor under the charter of incorporation, so that ultimately, like the College of Surgeons, and the Society of Apothecaries, "the Incorporated Law Society" may comprise every attorney and solicitor



practising in England or Wales. With a view to attain this end, it is suggested that the members should introduce such of their partners and professional friends as have not already joined the society.

(signed) KEITH BARNES,  
President.

## LAW OF COSTS.

### TAXATION BETWEEN PARTY AND PARTY—ABSTRACTS OF TITLE—EMPLOYMENT OF SECOND COUNSEL ON ANSWER—ABBREVIATING ANSWER—CONSULTATION ON EXCEPTIONS.

THIS bill, by an incumbrancer of an alleged remainder-man against the tenant for life for the production of the title-deeds and delivery of copies and abstracts, was dismissed with costs. The defendant's costs were taxed at £410. The plaintiff objected to the allowance of a charge of £60 18s. 4d. for drawing an abstract of the defendant's title-deeds, and of £60 18s. 4d. for making two copies thereof for counsel, and of opinions of various counsel on the title; also for making two copies of the interrogatories and other papers to be laid before counsel for preparing the answer; also fees, &c., to two junior counsel for settling the answer and attendances; also the increase from £5 3s. 8d. to £18 8s. 8d. of the item for abbreviating the answer, by estimating it at its total length, including the schedules, and this after the bill had been brought into the office; and lastly for consultation with reference to the exceptions which were taken to the answer. The Master had disallowed all the objections.

The Master of the Rolls said—

"This is an appeal from the taxation of a bill of costs by one of the Taxing Masters, the bill in the cause having been dismissed with costs.

"The first item complained of is an item of about £60 for drawing an abstract of certain documents which were required for the defendant's answer. The question is the propriety of the amount the Master has allowed. The amount in the bill charged was £79 6s. 8d., and the Master has diminished the number of brief-sheets by his mode of calculating.

"This depends on the 120th order of the 8th of May, 1845. The words of the order are these:— 'Where costs are to be taxed as between party and party, the Taxing Master may allow to the party entitled to receive such costs, all such just and reasonable expenses as appear to have been properly incurred in' (I pass over those that do not relate to this) 'supplying counsel with copies of, or extracts from, necessary documents.' The word 'abstract,' I have reason to know, at least I have been so informed by extremely good authority since this case was heard, was purposely omitted from this order, in order to avoid the extra price of 6s. 8d. per sheet being obtained, instead of 8s. 4d., which would be the price allowed for a copy. At the same time, if a solicitor who might have copied at length a large number of documents, and might have charged 8s. 4d. per sheet for them, has omitted to do so, but, in lieu thereof, has prepared an abstract of less than half

the size, and at a less expense than would have been incurred by making copies of the documents, I should think, that on the taxation of costs, this might properly be allowed, because, in point of fact, there is a benefit derived to the parties by it. But in either case, the documents in question must be prepared for the purpose of the suit, and whether this was so or not in the present case depends on the affidavit of Mr. Hooper, the clerk of the solicitor of the defendant, who has put in in a very fair affidavit stating how the matter stood. The passage which refers to this matter is this:—

" 'I personally superintended the management of this suit on behalf of the above-named defendant, and in particular the preparation of the abstract of title laid before counsel on behalf of the said defendant, for the purpose of enabling them to prepare the answer to the bill filed by the above-named plaintiff in this cause, and that the preparation of such abstract of title (being the same abstract as is mentioned in the bill of costs of the said defendant in this cause) was commenced on or about the 30th day of May, 1844, at which time an arrangement was pending for supplying the plaintiff, at his own expense, with such abstract of title, without suit, but such arrangement was not carried out, and the above-named plaintiff filed his bill of complaint in this cause, when such abstract of title was completed, and used for the purpose of preparing the answer of the defendant, as before mentioned, and such abstract of title was not prepared for any other purpose or occasion whatever than that before mentioned.'

"Now I think, upon this statement, that the abstract cannot be said to have been prepared for the purpose of the answer. It was, in point of fact, prepared before the suit, and with a view to an arrangement, although arising out of the same matter, and between the same parties, and I think that the order confines the allowance to such documents only as are prepared really and *bond fide* for the answer. Certainly, if it were done for a totally distinct purpose some time before, no one could reasonably contend that it could be charged, and so, also, if done in respect of a question between the same persons, but on a distinct occasion. I think that, to entitle it to be charged, it must be done *bond fide* for the purposes of the answer, and that this was not so in the present case, as it appears, in fact, to have been prepared before the bill was filed. The copy of it, for the counsel who prepared the answer, is proper, and must be allowed.

"The next question is, the propriety of the allowance of two junior counsel to settle the answer of the defendant, Lord Dysart. Mr. Measure, a conveyancer of eminence, had been consulted by Lord Dysart on the subject of his title, and also as to what documents might be produced, and what not; it was, therefore a matter of importance to Lord Dysart that the advice and assistance of Mr. Measure should be obtained in the preparation of his answer. Mr. Measure, however, not being in the habit of practising in court as an equity draftsman, it required some other gentleman should be employed as junior counsel. This is certainly a very good reason why, for Lord Dysart's satisfaction, two counsel should have been employed on that occasion, but, in my opinion, it affords no good reason for charging it against the plaintiff. In every case it might be a satisfaction to the defendant to have the united assistance of two counsel to prepare his pleadings, and I see no circumstances of peculiar difficulty or intricacy in this case which requires the assistance of two counsel for the performance of those duties which are almost invariably performed by the junior counsel alone. It is, in fact, the introduction of a third counsel in the case, for certain parts of the suit, and I am unable to discover any grounds on which I

could refuse to allow this in the great majority of cases, if I were to allow it in the present instance.

"As a general rule two counsel are allowed, a junior and a senior; where more are allowed it is an exception to the general rule. So the preparation of the answer by two counsel is an exception to the general rule, and in my opinion the sanction of the court should be obtained for this extra assistance, before it can properly be allowed by the taxing master in a question between party and party. It is the court alone that is able to judge of the propriety of this extra assistance being charged, inasmuch as it has before it all the details of fact and the points of law which are raised and discussed, on which it has to form and pronounce an opinion.

"In my opinion, therefore, all that portion of this bill of costs which has been occasioned by the employment of Mr. Measure, however proper as regards Lord Dysart, cannot properly be charged as between party and party against the plaintiff, and it must be omitted from the bill.

"The fee for abbreviating the answer by estimating the answer at its total length, including the schedules, I find, on inquiry, is the regular and legitimate charge. This, therefore, is right, and ought to be allowed. I may also observe, that the Master is right in allowing the bill of costs to be altered for this purpose. The bill of costs, as between party and party, is always susceptible of being added to or varied, after it has been brought into the office. In this respect, it is quite different from a bill of costs taxed under the statute, where an alteration cannot be made as against the client, except with his consent, after the bill has been brought in for taxation. In cases of taxation of costs, as between party and party, the bill of costs is analogous to a mere statement of facts, and is a claim by one party against another party to a suit, and it may be amended, in any way and at any time, before the taxation is concluded. This has been the invariable practice, as I am informed on inquiry.

"With respect to the remaining items, I think that a consultation on the exceptions between the counsel was proper, and ought to be allowed, distinct from the consultation on the cause, although, by arrangement, the exceptions stood over to come on with the hearing of the cause. I do not understand correctly whether copies of interrogatories are charged for in this consultation as distinct from the copies made for the purpose of the preparation of the answer. It appears to me, that such is the case. If so, then my opinion is, that only copies of the interrogatories to those answers which were excepted to can be allowed for this purpose; and as I have already stated with respect to the employment of a third counsel, one copy only ought to be allowed in the preparation of the answer.

"In all other respects, the taxation of the Master, on the matters complained of, appears to me to be correct. There must, therefore, be an order to review the taxation in the matters mentioned, and no costs on either side. Probably after the statement I have made it will not be necessary to send the bill back to the Master, but it may be moderated by the solicitors on both sides, who will easily be able to arrange it, after what I have stated as my view of the case."

*Davis v. Earl of Dysart*, 21 Beav. 124.

## INNS OF COURT EXAMINATIONS.

MICHAELMAS TERM, 1856.

THE Council of Legal Education have approved of the following rules for the Public Examination of the students.

The attention of the students is requested to the following rules of the inns of court:—

"As an inducement to students to propose themselves for examination, studentships shall be founded of fifty guineas per annum each, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each public examination; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations; and the inns of court to which such students belong may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the bar. Provided that the examiners shall not be obliged to confer or grant any studentship or certificate unless they shall be of opinion that the examination of the students they select has been such as entitles them thereto."

"At every call to the bar those students who have passed a public examination, and either obtained a studentship or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day."

"No students shall be eligible to be called to the bar who shall not either have attended during one whole year the lectures of two of the readers, or have satisfactorily passed a public examination."

*Rules for the Public Examination of Candidates for Honours, or Certificates, entitling Students to be called to the Bar.*

An examination will be held in next Michaelmas Term, to which a student of any of the inns of court, who is desirous of becoming a candidate for a studentship or honour, or of obtaining a certificate of fitness for being called to the bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the inn of court to which he belongs, on or before the 28th day of October next, and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction; or whether he is merely desirous of obtaining a certificate preliminary to a call to the bar.

The examination will commence on Thursday, the 30th day of October next, and will be continued on the Friday and Saturday following.

It will take place in the Benchers' Reading Room of Lincoln's-inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

*Thursday Morning, the 30th October, at half-past Nine, on Constitutional Law and Legal History; in the Afternoon, at half-past one, on Equity.*

*Friday Morning, the 31st October, at half-past nine, on Common Law; in the Afternoon, at half-past one, on the Law of Real Property, &c.*

*Saturday Morning, the 1st November, at half-*

past nine, on Jurisprudence and the Civil Law; in the *Afternoon*, at half-past one, a paper will be given to the students, including questions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on *Saturday Afternoon* there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary according as the student is a candidate for honours or a studentship, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned; regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations, until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time as a candidate for the studentship, but only at one of the three examinations immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship.

The Reader on Constitutional Law and Legal History proposes to examine on the following subjects:

He will expect the candidates for honours in the ensuing examination to be thoroughly acquainted with the chapters in Hallam's Constitutional History, which treat of the reigns of Henry the Eighth, of James and Charles the First, James the Second, William the Third, and Anne.

He will expect them also to be well acquainted with the chapters in Stephen's Blackstone relating to the Law of Treason, and the History of our Testamentary Law as regards Land and Personal Estate; and with the State Trials during the period mentioned above.

He will expect them to possess an accurate knowledge of English History, from the Conquest to the year 1782.

The candidates for a pass will be required to answer any general questions as to the leading events in English history, to be well acquainted with the history of the reigns of James the First, Charles the First, and Charles the Second, and with the chapters in Mr. Hallam's Constitutional History, in which the events of that period are discussed.

He will expect them also to be well acquainted with the trials of Russell, College, and Sydney.

The Reader on Equity proposes to examine in the following books and subjects:—

1. Smith's Manual of Equity Jurisprudence; Mitford on the Pleadings in the Court of Chancery. Introduction: chapter 1, sec. 1 and 2; chapter 2,

sec. 1; chapter 2, sec. 2, part 1 (the first three pages); chapter 2, sec. 2, part 2 (the first two pages); chapter 2, sec. 2, part 3; chapter 3. The Act for the Improvement of the Jurisdiction of Equity, 15 & 16 Vict. c. 86.

2. The Cases and Notes contained in the First Volume of White and Tudor's Leading Cases.

Candidates for certificates of fitness to be called to the bar will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for the studentship or honours will be examined in the books mentioned in the two classes.

The Reader on the Law of Real Property, &c. proposes to examine in the following books and subjects:—

1. Joshua Williams on Real Property; the same author on Personal Property; Hayes on the Common Law, Uses and Trusts.

2. The Alienation of Real Estate by Tenants in Tail and Married Women respectively.

3. The Law of Judgments. Pridaux on Judgments; the Statute 18 & 19 Vic. c. 15.

4. The liability of Purchasers to see to the application of their Purchase Money.

5. The Law of Perpetuities. The Law as to accumulation of Income—*Cadell v. Palmer*, 1 Clark and Fennelly, 372; and *Griffiths v. Vere*, 9 Vesey, 127; and the Notes to those Cases in Tudor's Leading Cases in Conveyancing.

Candidates for honours will be examined in all the foregoing subjects, and candidates for a certificate in those under heads 1, 2, and 3.

The Reader on Jurisprudence and the Civil Law proposes to examine candidates for honours in the following books:—

1. The Introduction and First Book of the Institutiones Juris Romani Privati of Warnkönig.

2. The last two Titles of the Last Book of the Digest, De Verborum Significatione and De Regulis Juris.

3. Wheaton's Elements of International Law. Part I., chapters 1 and 2; Part II., chapters 1, 2, and 3.

4. Lindley's Introduction to the Study of Jurisprudence. Part II., chapter 2, with the Notes.

Candidates for a certificate will be examined in—

1. First Two Books of the Institutes of Justinian, with the Notes contained in Sandars's Edition.

2. Wheaton's Elements of International Law. Part I., chapters 1 and 2; Part II., chapters 1, 2, and 3.

The Reader on Common Law proposes to examine in the undermentioned books and subjects:—

Candidates for a certificate will be expected to be familiar with—

1. The Elements of our Criminal Law (which may be collected from any Treatise on the Subject published since the passing of Lord Campbell's Acts).

2. The Principles of the Law of Contracts, so far as expounded in Smith's Lectures on Contracts (by Malcolm).

3. The following Cases from the first vol. of Smith's Leading Cases, with the Notes thereto: *Ashby v. White*, *Collins v. Blantern*, *Lamplough v. Braithwait*, *Scott v. Shepherd*.

Candidates for honours will be examined in the

subjects 1 and 2 *supra*, and as connected therewith answer questions touching the ordinary steps and proceedings in an action at law, and at a criminal trial, and having reference to the law of evidence there administered (as to which see Taylor's Evid. 2nd edit. part III. chaps. 2 and 3).

A. (Law of Homicide). *Mackalley's Case*, 9 Rep., 61, 65; *R. v. Maugridge*, Kelyng R., 129; *Reg. v. McNaghten*, 10 Cl. and F., 200.

B. (Law of Contracts). *Pinnel's Case*, 5 Rep. 117 *Piggot's Case*, 11 Rep. 26. *Sidree v. Tripp*, 15 M. and W. 23. *Master v. Miller*, 1 Smith, L. C. 686.

Candidates for honours will also be expected to answer questions touching the ordinary steps and proceedings in an action at law, and at a criminal trial, and having reference to the law of evidence there administered (as to which see Taylor's Evid. 2nd edit. part III. chaps. 2 and 3).

By Order of the Council,

RICHARD BETHELL, *Chairman*.

Council Chamber, Lincoln's Inn,

4th August, 1856.

## DRUDGERY OF AN ATTORNEY'S OFFICE.

BY AN OLD PRACTITIONER.

I was articled in an office where there was not what may be called 'sharp', but certainly very active practice. My master had a large business of a miscellaneous kind, and was frequently opposed to men who had very small scruples, in the means by which they sought to attain their ends. These, however, were the exceptions to the general rule.

I had frequent opportunities of witnessing examples of the probity of attorneys towards their clients, and fair and honourable practice towards their brethren, which, I am sure, could not be surpassed by any class of society. I was often also delighted with the skill and ingenuity with which difficulties were met and overcome; when I thought our opponents had put us to a *non plus*, and that we must surrender at discretion or make the best terms we could for our client, I was delighted to find that my master, by some counter movement, like a skilful player at chess, turned the tables on his adversary, and out of an apprehended defeat gained a decided advantage. This was often attained by great labour and promptitude.

When I first went into his office, I was immediately placed at the desk, and set to copy or 'ingross' as it was called a *declaration*. I was told this was the second step in an action at law: the first being a *writ*, to which the defendant was compelled to *appear*. The ingrossment of this declaration occupied me two days, it contained several counts or statements of distinct grounds of action. I found it very tedious: each count resembled the others except only in a few words.

I was next directed to copy a draft *deed*, the meaning of which I could not precisely understand in consequence of the multitude of words, which it was said were necessary to prevent the possibility of mistake. Many of them might perhaps be dispensed with, but I was told that it was not the duty of an attorney to encounter the responsibility of striking out terms and expressions which might be deemed unnecessary, especially as the courts had put a technical construction on their legal import.

My next achievement was the copying of a *Bill in Chancery*. The first day was occupied upon what

is called the *stating* part of the bill. It was rather verbose, but not so unintelligible as the declaration. It related to a ship that had been lost at sea. The second day found me working hard upon the *charging* part of this elaborate document. It appeared that there had been very foul play about this ship; it had scarcely a sound plank; it was not sufficiently manned; nor rigged; nor victualled; it had not guns enough; the captain was ignorant and the mate inebriated. Then it set forth that the defendants sometimes admitted part of the facts alleged, but defended their conduct by various pretences, whilst at other times they denied everything; and so it went on making shadows of defences, and then dispersing them. On the third day I had to copy the *interrogating* part of the bill. Here all the facts were again repeated in the form of questions, always concluding each interrogatory with an inquiry "if the fact was not so, why it was not so, or how otherwise?" Amongst other points it was alleged that the ship had been lost in consequence of certain rat-holes which had not been repaired, and it was asked whether there were not in and about the said ship one hundred or how many rat-holes, and (as if it were a merit to have them) if there were no rat-holes, why not, or how otherwise? I did not understand why a general interrogatory might not have been framed, calling upon the defendants to answer all the facts alleged fully and particularly as if they were separately interrogated to. I deemed this copying, day by day, to be great drudgery, and at last did as little of it as I could.

Thus far our "Old Practitioner," whose illustrations are indeed somewhat ancient, for many of them apply to forms of proceeding abolished twenty years ago. We may add, on the subject of "office drudgery," that during the early part of the clerkship to an attorney, it is useful to learn the forms and modes of preparing and transcribing professional papers. This knowledge will be most effectually acquired by repeatedly writing them, and he will thus also acquire a habit of patiently plodding through very tedious and laborious duties, which he will have to encounter when he comes into practice for himself. He will have to study confused and incomplete papers upon very dry and uninteresting subjects, and the drudgery to which he now demurs will serve as a good exercise for that labour in which he will be hereafter engaged for his own advantage.

Ed.

## LEGAL MISCELLANEA.

### NUMBER OF MODERN ACTS OF PARLIAMENT.

For a long period of years, the annual number of acts passed has been usually large, although varying considerably in every session. Between the 4th and 10th of George 4, 1,126 acts were wholly repealed, and 448 repealed in part, chiefly arising out of the consolidation of the laws by Mr. Peel (afterwards Sir Robert). Of these acts, 1,844 related to the kingdom at large, and 225 to Ireland solely. The greatest number of acts passed in any one year during the last fifty years (since 1800 the year of

the union with Ireland) was 562; this number was passed in 1846; of these 402 were local and personal, forty-three private, 117 of public interest. In 1841, only thirteen were passed (the lowest number) of which two were private. In three instances only, the annual number was under a hundred. The average number of the first ten years of the present century was 182 public acts. In the ten years ending 1850, the average number of acts of public interest was 112. In 1851, the number of acts was 106; and in 1852 (up to the close of the session in July) there were 88 public acts.

#### CHANCERY DELAYS IN GERMANY.

In Lewes's "Life of Goethe" (p. 167) we have the following account of German "delays in Chancery," which seem to come up to, if they do not surpass those in the celebrated cause of *Jarndyce v. Jarndyce*: "In Wetzlar there were two buildings interesting above all others, the Imperial Court of Justice and the *Teutsche Haus*. The Imperial Court was a court of appeal for the whole empire, a sort of German Chancery. Imagine a German Chancery? In no country known to us does Chancery move with railway speed, and in Germany even the railways are slow. Such a chaotic accumulation of business as this Wetzlar *Kommer-Gericht* presented was perhaps never seen before. Twenty thousand cases lay undecided on Goethe's arrival, and there were but seventeen lawyers to dispose of them. About sixty was the utmost they could get through in a year, and every year brought more than double that number to swell the heap. Some cases had lingered through a century and a half, and still remained far from a decision. This was not a place to impress the sincere and eminently practical mind of Goethe with a high idea of jurisprudence.

#### MEMOIR OF MR. G. A. A'BECKETT

It is with great regret that we announce the death of Mr. Gilbert Abbott A'Beckett, long favourably known to the public as an author and contributor to several literary works, and more recently as a police magistrate.

Mr. G. A. A'Beckett was the youngest son of Mr. A'Beckett, so long known as the Reform solicitor, and of high influence in the contested elections of Westminster. The eldest son is Sir Wm. A'Beckett, whose merits as the Chief Justice of the Supreme Court of Victoria, Australia, have frequently been acknowledged by the press, by the government, the colonists, and in Parliament. Mr. G. A'Beckett married in early life, the eldest daughter of the late Mr. Glossop. The first work of Mr. A'Beckett (at the age of 20) was *Figaro in London* for which his humour and sarcasm obtained a large and highly remunerative popularity. Mr. A'Beckett then embarked in several literary speculations, which afterwards failed.

Following the advice of his elder friends, Mr. A'Beckett entered himself at the bar, and refraining for some time from literary exertions, applied himself studiously to the cultivation of the profession he had chosen. He was called to the bar by the Hon. Society of Gray's Inn, on the 27th January 1841.

From this legal retirement, the appearance of *Punch* first tempted him to issue "A Comic History of England," a work at once shrewd and humorous, sensible, and useful. For the next few years, Mr. A'Beckett was a regular contributor of leading articles to the *Times*, and of many amusing *morceaux* to *Punch*. He also contributed to this periodical. His appointment as a police magistrate was made at the latter end of the year 1849, shortly after the death of Mr. John Cottingham. Mr. Secker was then sitting at the Southwark Police Court and he changed with Mr. A'Beckett, who at that time was doing duty at Greenwich and Woolwich. He has continued to fill his office at the Southwark Police-court with admirable acuteness, humanity, and impartiality—another proof, if more be required, that literary talent does not necessarily incapacitate the possessor for administrative functions.

He died at Boulogne on August 30th last.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

##### Lord Chancellor.

*Wilks v. Groom.* Aug. 3, 1856.

TRUSTEE ACT, 1850—APPOINTMENT OF PERSON TO CONVEY WHERE TRUSTEES RENOUNCED—NEW TRUSTEES.

*The trustees under a will of property in trust for sale renounced, and the plaintiff obtained letters of administration with the will annexed, and the*

*estates were sold under a decree in a suit: Held, affirming the decision of Vice-Chancellor Kindersley, that an order was proper appointing a person to convey under the 18 & 14 Vict. c. 60, s. 20, and not to appoint new trustees under sections 82 & 83.*

THIS was a petition, by way of appeal, from Vice-Chancellor Kindersley, who had made an order for the appointment, under the 18 & 14 Vict. c. 60, s. 20, of a person to convey certain estates which were

devised to two trustees in trust for sale, and who had also been appointed executors, where they had renounced, and administration with the will annexed been granted to the plaintiff. The estates had been sold in the suit under a decree, but one of the purchasers objected to the title on the ground that trustees should have been appointed in the stead of the disclaiming trustees, under ss. 32, 33, and a vesting order have been made.

By s. 20 it is enacted that "in every case where the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, shall, under the provisions of this act, be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons born or unborn, it shall also be lawful for the Lord Chancellor intrusted as aforesaid, or the Court of Chancery (as the case may be), should it be deemed more convenient, to make an order appointing a person to convey or assign such lands, or release or dispose of such contingent right; and the conveyance or assignment, or release or disposition, of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying or assigning the lands, or releasing or disposing of the contingent right, as the order of the Lord Chancellor intrusted as aforesaid, or the Court of Chancery would, in the particular case, have had under the provisions of this act."

And by s. 32, that "whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or trustees either in substitution for or in addition to any existing trustee or trustees." And by s. 33, that "the person or persons who, upon the making of such order as last aforesaid, shall be trustee or trustees, shall have all the same rights and powers as if he or they had been appointed by decree in a suit duly instituted."

*Wickens*, for the purchaser, in support; *Baily* and *G. W. Collins*, for the plaintiff, contra.

The Lord Chancellor said that the order of the Vice-Chancellor was right, and dismissed the petition with costs.

### Lords Justices.

TENANT IN COMMON—BILL FOR ACCOUNT AGAINST CO-TENANT.

*Lek v. Cordeaux and another.* August 4, 1856.

Held, affirming the decision of Vice-Chancellor Stuart, that the representatives of a tenant in common were entitled to claim for the occupation by the other tenant in common of an estate devised to them by testator in undivided moieties, and might file a bill to obtain an account of such claim.

THIS was an appeal from the decision of the Vice-Chancellor Stuart varying the certificate of his chief clerk, who had disallowed the claim of the representatives of a tenant in common in respect of the occupation by the other tenant in common of the estate, devised to them by a testator in undivided moieties, until it was sold as directed by the will after the death of the tenant for life.

By the 4 Anne, c. 16, s. 27, it is enacted that "actions of account shall and may be brought and maintained" "by one joint tenant and tenant in

common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint tenant or tenant in common."

*Bacon* and *Amphlett* in support; *Malins* and *Faber* for another defendant.

The Lords Justices (without calling on *Baily* and *Elderton* contra) said, that in accordance with the decision of *Turner v. Morgan*, 8 Ves. 143, a tenant in common might sustain a suit in equity against his co-tenant for an account, and the appeal was accordingly dismissed—costs to be costs in the cause.

### Master of the Rolls.

*In re Thomson.* July 31, 1856.

DEVISE—SUBSEQUENT CONVICTION OF FELONY—CROWN.

A testator devised an estate to trustees in trust to sell and divide the proceeds among his three children, and another estate in trust for his wife for life, and after her death the proceeds of its sale among his children. One of the children, after the sale of the first estate, but before division, was convicted of felony: Held, that the Crown was entitled to his interest in both properties.

It appeared that the testator by his will devised certain lands to trustees upon trust to sell the same immediately after his death, and to divide the proceeds equally among his three children. He also gave other lands in trust for his wife for life, and directed that after her death the same should be sold and the proceeds also divided among his children. It appeared that, after the first-mentioned lands had been sold, but before the division of the proceeds, one of his children was convicted of felony. The testator's widow was still alive.

The question was now raised whether the Crown was entitled to the interest of the son in both devises.

*Prendergast* for the son; *Wickens* for the Crown.

The Master of the Rolls said, that as the son was entitled to immediate payment of the proceeds under the first devise, and had a vested interest under the second, at the time of his conviction, the Crown was entitled to both.

### Vice-Chancellor Stuart.

*Boycott v. Newman.* June 30, 1856.

WILL—GIFT TO A CLASS—RAISING FUND—INQUIRIES—COSTS.

A sum of money directed to be raised out of the testator's real and personal estate was left to the grandchildren of his cousin living at the death of the testator's wife: Held, that the costs of raising the fund were payable out of the general estate, and of the inquiries as to the parties entitled out of the particular fund.

THIS was a petition by the three surviving grandchildren of one Richard Beet, the cousin of the testator in this suit, which was instituted to carry the trusts of his will into execution, and among such of whom as should be alive at the death of the testator's widow, the life-annuitant, he had bequeathed a sum of £8,000, to be raised out of his real and personal estate. Inquiries had been directed, and the three petitioners found to be entitled, and the £3,000 had been ordered to be raised by sale or

mortgage. The matter now came on upon the question of costs.

The Vice-Chancellor said that the costs of raising the £3,000 would come out of the general estate, but

of the inquiries out of the particular fund.

*Bird* for the grandchildren; *Wigram* and *C. Ho* for the plaintiffs; *C. Griffith Smith* and *Edward Fry* for the defendants.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### Scotch Appeals to the House of Lords.

(Continued from p. 312)

#### RAILWAY.

2. *Contracts by the originators—how far binding on the company.*—The original promoters of a railway project have no power to bind the corporation ultimately constituted by Act of Parliament.

The corporation so constituted, though owing its existence to the exertions of the promoters, is not bound to fulfil their contracts.

The promoters are not agents by anticipation of the corporation.

Anterior engagements can only bind the corporation when incorporated in their act, or when deliberately adopted by them.

3. *Right of shareholders to object.*—The policy of railway legislation is to prevent surprises on the shareholders, who are, consequently, entitled to look to their act, and disregard everything else.

4. *Agreements before Parliamentary Committees.*—Parties contesting before a Parliamentary Committee come to an agreement to the effect that certain stipulations shall be deemed to be as binding and obligatory as if they were made the subject of express enactment in the bill; which is consequently allowed to pass without them. The agreement in such a case, though sanctioned by the committee and binding on the parties, will not bind the future company created by the act.

*Lord Cottenham's decisions.*—The doctrines of Lord Cottenham in *Edwards v. The Grand Junction Railway Co.*, *Stanley v. The Chester and Birkenhead Railway Co.*, and *Lord Petre v. The Eastern Co's. Railway Co.*, criticised and questioned.

The Court of session having pronounced a decree against the Caledonian and Dumbartonshire Railway Co., decreeing them to perform an agreement entered into by the committee of management on behalf of the projected company before their act was obtained, and the agreement being one of which the act did not authorise the execution: *Held*, that performance of the agreement was *ultra vires*, and that the decree, consequently must be reversed. *Caledonian and Dumbartonshire Junction Railway Co., v. Magistrates of Hellenburgh*, 2 Macq. 391.

And see Poor Law Act; Railways Clauses (Scotland) Act.

#### RAILWAY CLAUSES (SCOTLAND) ACT.

8 & 9 Vic. c. 33—*Equalization of charges*, 5 Vic. c. 29.—Circumstances in which it was held (Lord St. Leonards dissenting), that uniformity of charge by a railway company was not compellable.

Whether money overpaid in case of an overcharge by a railway company can be recovered back;—on this question the Law Peers differ.

*Attorney-General v. The Birmingham and Derby*

*Junction Railway Company* (2 Rail. Ca. 124) decided by Lord Cottenham, pronounced by Lord St. Leonards not "very clear or altogether satisfactory."

The Lord Chancellor and Lord St. Leonards (the only Law Peers present) being divided in opinion the decision below affirmed; and an application by the appellants' counsel (relying on the precedent of *Johnstone v. Beattie*, 10 Cla. and Finn. 83) refused. Remark by the Solicitor-General. *Finnie v. Glasgow and South Western Railway Company*, 2 Macq. 177.

2. *Verdict, ultra vires—Acquiescence.*—Under the Railways and Lands Clauses Consolidation Act, where the sheriff and jury in awarding damages go beyond their authority, the power of setting aside right is not excluded.

Where the verdict was for "severance and level crossing," but without distinguishing how much was to be for "severance" and how much for "level crossing," it being impossible to reduce the verdict to the level crossing alone—it was overturned in toto.

Where it is *pars judicis* to point out to the jury that they are going beyond their province, the defect of authority cannot be cured by acquiescence. *Caledonian Railway Company v. Ogilvy*, 2 Macq. 229.

#### REGISTRATION.

See *Entail*, 1.

#### SHAREHOLDERS.

See *Railway*, 3.

#### TRUST FUND.

*Postponed or suspended, enjoyment of—Fencing.*—Circumstances in which it was held (affirming the decision of the court of session) that the beneficial enjoyment of a trust fund was not postponed or suspended until certain debts and annuities charged upon it were paid. *Johnston v. Johnston* commented upon. *Pursell v. Newbiggin*, 2 Macq. 273.

#### VERDICT.

*Of not proven.*—A verdict in the words *not proven* though more usual in criminal proceedings, is not necessarily bad in matters of civil jurisdiction. *Morgan v. Morris*, 2 Macq. 342.

And see *Issue*; *Railway Clauses (Scotland) Act*, 2.

#### VESTING.

See *Trust Fund*.

#### WATER COMPANY.

See *Agreement*.

#### WILL.

*Construction—"Nearest relations"*—*Half blood.*—Circumstances in which it was held (affirming the decision of the court of session) that a testator, in using the phrase "nearest relations," meant to include children of his sister by the half blood. *Scott v. Scott*, 2 Macq. 281.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, SEPTEMBER 13, 1856.

### LEGAL EXAMINATION DISTINCTIONS.

#### NEW REGULATION—NUMBER AND CLASSES OF ARTICLED CLERKS—MODE OF EXAMINATION —CLASSICAL ATTAINMENTS.

THE Long Vacation having commenced, and two months only remaining before the next Examination, it may be of service to some of our younger readers to remind them of the alteration which will take place in the next and future Terms in the examination of candidates for admission on the roll of attorneys and solicitors.

In order to encourage a careful study of the law, the examiners will select the names of three candidates in each term, being under the age of twenty-six, who, in passing their examination, shall appear to have deserved honorary distinction, with a view to the Council of the Incorporated Law Society presenting to such candidates a *Prize of Books*, or such other testimonial as may be deemed a suitable reward.

Whilst calling the attention of the articulated clerks to this regulation, we venture also to remind the attorneys themselves of the propriety of ascertaining, from time to time, the progress which their articulated clerks are making as well in the study as the practice of the law. It need scarcely be urged that it is not sufficient for a successful examination that the clerk should be zealous, active, and intelligent in the common routine of business. A young man of energetic habits, with good natural ability, may gain credit for promptitude and attention in practical matters, and be justly esteemed as a valuable assistant in the office, and yet may fail to pass the examination.

We have heard of instances of clerks to whom a considerable share of professional business has been entrusted—for instance, in common law or bankruptcy, and who have been unable to answer a sufficient number of the questions in conveyancing and equity. Devoted, much to their credit, to the department confided to them, and gaining a reputation for ability in that department, they have supposed that an ordinary or superficial amount of knowledge in other branches would enable them to pass the ordeal. We

believe that many have been subjected to great mortification on finding that the examiners did not feel themselves justified in certifying the "fitness and capacity" of the candidate to act as an attorney and solicitor in the three essential branches of common law, equity, and conveyancing. And such must necessarily be the case if the candidate cannot answer with tolerable accuracy a majority of the fifteen questions in those departments.

We proceed, therefore, to notice this further step which has been taken by the Incorporated Law Society for the improvement of their branch of the profession.

Although no distinction has hitherto marked the difference between those who have just passed and those who have excelled, many of the candidates have wisely answered the questions to the best of their ability, and the examiners, we understand, have often regretted that they could not award some testimonial of the superior attainments which had been evinced. On one occasion, however, the master who had presided at the examination could not refrain from noticing the candidate on his coming up to be sworn in court (in the presence of his fellow students), and commending him for the merit of his examination. No doubt, also, the names of others who have shown more than ordinary knowledge have been occasionally mentioned by individual examiners, though there could be no official notice of merit. The subject of awarding some appropriate reward for superior diligence and ability has been long under the consideration both of the masters who preside and the other examiners selected from the Council of the Incorporated Law Society; and the course of proceeding which it is intended to adopt seems to be very judiciously arranged; and if we correctly understand the mode of carrying the new regulation into effect, it is well devised for the purpose of testing the candidate's legal knowledge in a manner which we think cannot be deemed too stringent or severe.

The importance of the new measure may be estimated when we consider the large number of professional clerks who have to undergo this ordeal of the examination. There are probably upwards of 2,000 serving under articles at the same time. This supposes only one-fifth of the attorneys in England and



Wales to have articled clerks in their offices at any given period, though many of them (even where there are several partners) have their full complement of two clerks. If all who are articled were examined and admitted, the number would far exceed the actual admissions on the roll; but a considerable proportion never complete the term of service: some pass into other professions; not a few go to the colonies; others retire from ill health; and some remain as clerks. Others are examined, but postpone their admission, or, if admitted, do not take out their certificates until they have a prospect of establishing themselves in business or of joining a partnership. From these and other causes a large per centage must be deducted from the gross number who commence the career of an articled clerk.

There are various classes of persons comprehended in the general body of articled clerks:—1. Those who, being the sons of wealthy parents, pay a liberal premium to some eminent solicitor, and feel themselves entitled to pass their term of service in an easy gentlemanly manner; yet amongst them are some energetic and industrious men, who exert themselves, master the difficulties of their profession, and soon take a prosperous position amongst their brethren. 2. The next class are articled to attorneys of moderate practice, to whom they pay a smaller premium, and are expected to submit to some of the drudgery of the office, and are in general more practically useful than the wealthier class. 3. The remaining class are for the most part young men who have shown their diligence and ability as managing clerks, and enter into articles without paying any premium, and sometimes from their merit receive a moderate salary during their clerkship.

Of the candidates examined it cannot be predicated that those who pass in a superior manner belong to any one of these three classes more than another; each class, we believe, supplies an average quota of excellence, of mediocrity, and defect. There is no "royal road" at the examination; strict impartiality prevails; the pupils of some of the examiners have been rejected, and the same fate has followed the sons of persons holding high positions in the law.

In carrying the new regulation into effect we presume that the candidates will be examined (as hitherto) in five departments of law and practice—namely, in common law, conveyancing, equity, bankruptcy, and criminal law, including proceedings before magistrates. They will be required to answer the questions in the first three branches in a satisfactory manner in order to entitle them to pass. We conceive (looking at the announcement made to the candidates) that a certain number of marks will be given, according to the nature of the question, and the merit of the answer, whether perfectly accu-

rate and complete,—accurate to a certain extent, but incomplete,—or evincing a sufficient knowledge of the subject to justify a single mark.

We are not aware that any candidate has been rejected who sufficiently answered eight questions in common law, and the like number in conveyancing and equity. Assuming this practice to be continued, a candidate must obtain a certain number of approval marks on the questions answered in each of these three essential classes; and it is expected that the practice will be pursued of framing questions in bankruptcy and in criminal law, including proceedings before magistrates. The approval marks in these departments, we suppose, will also be reckoned in estimating the merit of the whole examination of each candidate. We conceive, however, that it would not be sufficient to answer accurately a less number than eight in any one of the three principal branches, and a larger number in another. There must be twenty-four questions well answered.

It will of course be understood that we make these remarks merely to aid the candidates who may not be aware of the intended prizes, and not from any official authority. They will of course, from term to term, be duly apprised under the directions of the examiners of all the details necessary for their guidance; and in the meantime we trust that the candidates for next term, who intend to compete for the prize, will use due diligence in their studies during the present vacation. A continued strenuous exertion may be crowned with success.

Before concluding this article it may not be inappropriate to add a few words on the subject of the preliminary examination which has been suggested in some branches of literature and science, prior to the legal or professional examination. Several of the provincial law societies have signified their approval of such preliminary examination; but some have doubted whether it ought to take place *before*, or *during*, or at the *termination* of the clerkship. The Council of the Incorporated Law Society incline to the latter course, especially in the outset of the change.

It has been suggested [that whenever a classical examination shall take place, whether before or after a student is permitted to enter into articles of clerkship, it should not extend beyond the Latin and French languages; arithmetic, algebra, logic, and English history; and that the examiners should prescribe the extent to which the examination should proceed, and the stringency of which they might gradually increase.

It is not improbable, as some have urged in opposition to the plan, that if a classical examination were required before entering into articles, several respectable members of the profession, who have been, or are now in good

practice, would have been either excluded altogether, or their admission long delayed. In this age of free competition of all kinds, it may be questioned whether the popular branch of the legislature could be induced to prohibit every one from entering into articles of apprenticeship who had not received a classical education; and it is admitted that the proposition of a preliminary examination cannot be carried into full effect without an act of Parliament.

With regard, however, to the apprehended exclusion of persons who have not received a liberal education, it may be replied that the same amount of industry and talent which enables an attorney not only to pass his legal examination, but to establish himself in successful practice, would rapidly surmount the difficulty attendant upon the acquisition of classical or modern languages, and enable him to attain some mathematical knowledge, and some skill in English composition. His feeling of ambition would not be gratified by escaping from an examination which the great body of his profession had successfully passed.

#### PRIZES IN THE FACULTIES OF LAW IN FRANCE.

In March, 1840, the late King Louis Philippe instituted annual prizes in the Faculties of Law, founded on the report of M. Cousin, which is quoted by Mr. Jones in his valuable history of the French Bar.\* The report states that,

"The study of the law is one of the most important subjects which have been confided to the University, and every body admits that it demands a new impulse, to give it that elevated position at which it had arrived in France in the sixteenth and seventeenth centuries. Seconded by the Royal Council of Public Instruction and the Commission on Law Studies instituted by the Royal Decision of the 29th of June, 1838, I trust I shall be able successively to propose to your Majesty such measures as will ameliorate the study of the law in the nine Faculties of the kingdom. At present, I have the honour to submit to your Majesty a primary measure, the utility of which is incontestible, namely, the regular establishment of Prizes in the Faculties of Law.

"In the present state of things the students of the Faculties of Law undergo certain examinations for the degrees of Bachelor, Licentiate, and Doctor; but these examinations are individual, and do not afford matter of comparison between the candidates. Hence the absence of that emulation, which certainly must not be too much developed, but which must not either be stifled in the heart of man, because it is the source of all noble works. The secondary branch of Public Instruction is perhaps overcharged with prizes, the superior branch has none whatever. I therefore purpose filling up this blank, beginning with the Faculties of Law.

"The Faculties of Poitiers and Aix have already taken an honourable initiate. I have asked the Faculty of Paris for a note on this subject; I have consulted the High Commission, which has been

unanimous as to the utility of this institution; and the Royal Council of Public Instruction has no less favourably entertained it. It has been tried, and experience has confirmed it in two countries where legal studies are flourishing, in Holland and Germany. More than one dissertation, crowned in the German and Dutch Universities, has awakened a talent, created a vocation, decided a career. Sometimes even works have been produced by those competitions which have taken rank in science. Why should not the same institution produce the same result among us? I therefore propose with confidence to your Majesty the accompanying ordinance, which will be followed by a special regulation deliberated in the Royal Council of Public Instruction. The Ordinance lays down the principles, the Regulation will apply them; and here the principles are extremely simple.

"It has appeared to me useless to establish any competition or prizes in favour of students of the first and second year, whose studies are not as yet sufficiently advanced to merit any other recompense than the degree after the ordinary examinations. But we shall be greatly encouraging, although in an indirect manner, the labour of the students of the first and second year, by placing at the end of the third a competition, to which there shall be admitted such students only as have distinguished themselves in the examinations of the preceding years; at the same time the studies will then be sufficiently advanced to lead to results of some importance from this competition. There will be two subjects for the prizes, both taken from the matters which have been taught: the one from the French, the other from the Roman Law. I have been desirous, without ceasing to honour our National Law, to show a just solicitude for Roman Law, that law which has been called *La Raison écrite*, and which forms the foundation of the civil legislation of all Europe. Besides, the Roman Law, in order to be well understood, offers the advantage of requiring a patient and assiduous study of Roman Antiquity, the Jurisconsults, the Historians, the Orators, and almost all the monuments of ancient Rome; and your Majesty knows how necessary it is to encourage the love of labour in our lively and ingenious youth.

"But at the end of the fourth year, a competition of a different kind will be opened between the aspirants to the degree of Doctor and the Doctors of that and the preceding year. The competition of the third year is rather of a scholastic character; this one will be academic: it will treat upon matters proposed by the Faculty, and which the Minister himself, assisted by the High Commission of Studies and the Royal Council, shall select, and although confined to the studies of the schools, shall be destined to be useful to science. The matters, as in the case of all academic competitions, shall be published eight months in advance.

"We may therefore reasonably hope that these competitions will be productive of some truly remarkable dissertations, and that the laureates, by their very success, will contract such engagements with judicial science as will bind them to this important study, and induce them to adopt the career of teachers. Thus will be formed a nursery for the recruiting of Professors of Law.

"Finally, these different prizes, with the advantages attached to them, should be proclaimed at the meeting for the Annual Opening of the Faculties, and be the occasion of a solemnity like that for the

distribution of prizes in our Colleges. This solemnity would arouse more than one generous ambition, and the serious reports that would there be read, would mark successively, from year to year, the progress of the studies in each Faculty, and would keep up among all the Faculties of the kingdom a noble emulation, and that peaceful and regular movement which is the soul of everything.

"If your Majesty deigns to approve of these principles and these dispositions, your Majesty will be pleased to affix your signature to the accompanying Ordinance, &c."

"The terms of the Royal Ordinance of the 17th March, 1840, establishing the different prizes in the Faculties of Law, are as follow:—

"Art. 1. Prizes and honourable mentions shall be distributed every year in all the Faculties of Law in the kingdom, according to the result of a competition which shall take place:—first, among the students of the third year; secondly, among those of the fourth year, aspiring to the degree of Doctor, and the Doctors received by each Faculty, whether in the course of that year or the preceding one.

"2. Two first and two second prizes shall be distributed among the students of the third year:—first, for a composition written on a subject of Roman Law; and secondly, a composition on a subject of French Law, chosen among the different matters taught in the Faculties of Law.

"3. Two gold medals shall be awarded to students of the fourth year, aspirants for the degree of Doctor, and the Doctors, for a written dissertation, the subject of which, chosen by the Minister of Public Instruction from a list of questions taken from the different matters of law which are taught, shall have been published eight months in advance.

"4. The students of the third year who shall have obtained a first or second prize, shall have no fees to pay for their inscriptions, examinations, and diploma of doctor.

"5. A regulation, settled by the Royal Council of Public Instruction, shall determine the conditions of admission to the competition, and the manner in which it shall be carried out.

"6. The distribution of prizes and medals shall take place every year at the solemn sitting of the opening of each Faculty."

It appears that there are other prizes, both of a public and private character, attached to the Faculties of Law, in favour of the successful competitors of the two classes above mentioned, but which it will not be necessary to notice more fully, sufficient having been said to show the nature of the annual prizes, and their value and importance as incentives to studious exertion.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### THE MERCANTILE LAW AMENDMENT ACT, 1856.

19 & 20 Vic. c. 97.

1. Persons acquiring title to goods before they have been seized or attached under a writ against the seller protected.
2. Specific delivery of goods sold.
3. Consideration for guarantee need not appear by writing.

4. Guarantee to or for a firm to cease upon a change in the firm, except in special cases.
5. A surety who discharges the liability to be entitled to assignment of all securities held by the creditor.
6. Acceptance of a bill inland or foreign to be in writing on it, and signed by the acceptor or his agent.
7. What are to be deemed "Inland Bills."
8. With reference to the repairs of ships, every port within the United Kingdom, &c., a home port.
9. Limitation of actions for "Merchants' Accounts."
10. Absence beyond seas or imprisonment of a creditor not to be a disability.
11. Period of limitation to run as to joint debtors in the kingdom, though some are beyond seas; judgment recovered against joint debtors in the kingdom to be no bar to proceeding against others beyond seas after their return.
12. Definition of "beyond seas," within 4 & 5 Anne, c. 16, and this act.
13. Provisions of 9 Geo. 4, c. 14, ss. 1 & 8, and 16 & 17 Vic. c. 118, ss. 24 & 27 extended to acknowledgments by agents.
14. Part payment by one contractor, &c., not to prevent bar by certain Statutes of Limitations in favour of another contractor, &c.
15. Rules and regulations may be made and writs and proceedings framed for the purposes of this act.
16. Short title.
17. Extent of act.

The following are the title, preamble, and sections of the act:—

An Act to amend the Laws of England and Ireland affecting Trade and Commerce. [29th July, 1856.]

WHEREAS inconvenience is felt by persons engaged in trade by reason of the laws of England and Ireland being in some particulars different from those of Scotland in matters of common occurrence in the course of such trade, and with a view to remedy such inconvenience it is expedient to amend the laws of England and Ireland as herein-after is mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. No writ of fieri facias or other writ of execution, and no writ of attachment against the goods of a debtor, shall prejudice the title to such goods acquired by any person *bona fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ; provided such person had not, at the time when he acquired such title, notice that such writ, or any other writ by virtue of which the goods of such owner might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff, under-sheriff, or coroner.

2. In all actions and suits in any of the superior courts of common law at Westminster or Dublin, or in any court of record in England, Wales, or Ireland, for breach of contract to deliver specific goods for a

price in money, on the application of the plaintiff, and by leave of the judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to recover, find by their verdict what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered; what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof; what damages (if any) the plaintiff would have sustained if the goods should be delivered under execution, as herein-after mentioned, and what damages if not so delivered; and thereupon, if judgment shall be given for the plaintiff, the court or any judge thereof, at their or his discretion, on the application of the plaintiff, shall have power to order execution to issue for the delivery, on payment of such sum (if any) as shall have been found to be payable by the plaintiff as aforesaid, of the said goods, without giving the defendant the option of retaining the same upon paying the damages assessed; and such writ of execution may be for the delivery of such goods; and if such goods so ordered to be delivered, or any part thereof, cannot be found, and unless the court, or such judge or baron as aforesaid, shall otherwise order, the sheriff, or other officer of such court of record, shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick, or within the jurisdiction of such other court of record, till the defendant deliver such goods, or, at the option of the plaintiff, cause to be made of the defendant's goods the assessed value or damages, or a due proportion thereof; provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs, and interest in such action or suit.

3. No special promise to be made by any person after the passing of this act to answer for the debt, default, or miscarriage of another person, being in writing, and signed by the party to be charged therewith or some other person by him thereunto lawfully authorised, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

4. No promise to answer for the debt, default, or miscarriage of another made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties, that such promise shall continue to be binding notwithstanding such change, shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise.

5. Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by

the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding, at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided always, that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.

6. No acceptance of any bill of exchange, whether inland or foreign, made after the thirty-first day of December one thousand eight hundred and fifty-six, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorised by him.

7. Every bill of exchange or promissory note drawn or made in any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty, and made payable in or drawn upon any person resident in any part of the said United Kingdom or islands, shall be deemed to be an Inland bill; but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such bill or note.

8. In relation to the rights and remedies of persons having claims for repairs done to, or supplies furnished to or for, ships, every port within the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty, shall be deemed a home port.

9. All actions of account or for net accounting, and suits for such accounts, as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the cause of such actions or suits, or when such cause has already arisen then within six years after the passing of this act; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit.

10. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same shall be brought is fixed by the act of the twenty-first year of the reign of King James the First, chapter sixteen, section three, or by the act of the fourth year of the reign of Queen Anne, chapter sixteen, section seventeen, or by the act of the fifty-third year of the reign of King George the Third, chapter one hundred and twenty-seven, section five, or by the acts of the third and fourth years of the reign of King

William the Fourth, chapter twenty-seven, sections forty, forty-one, and forty-two, and chapter forty-two, section three, or by the act of the sixteenth and seventeenth years of the reign of her present Majesty, chapter one hundred and thirteen, section twenty, shall be entitled to any time within which to commence and sue such action or suit beyond the period so fixed for the same by the enactments aforesaid, by reason only of such person, or some one or more of such persons, being at the time of such cause of action or suit accrued beyond the seas, or in the cases in which by virtue of any of the aforesaid enactments imprisonment is now a disability, by reason of such person or some one or more of such persons being imprisoned at the time of such cause of action or suit accrued.

11. Where such cause of action or suit with respect to which the period of limitation is fixed by the enactments aforesaid or any of them lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas, and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond seas at the time the cause of action or suit accrued after his or their return from beyond seas, by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond seas at the time aforesaid.

12. No part of the United Kingdom of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any islands adjacent to them, being part of the dominions of her Majesty, shall be deemed to be beyond seas within the meaning of the act of the fourth and fifth years of the reign of Queen Anne, chapter sixteen, or of this act.

13. In reference to the provisions of the acts of the ninth year of the reign of King George the Fourth, chapter fourteen, sections one and eight, and the sixteenth and seventeenth years of the reign of her present Majesty, chapter 118, sections twenty-four and twenty-seven, an acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby, duly authorised to make such acknowledgment or promise, shall have the same effect as if such writing had been signed by such party himself.

14. In reference to the provisions of the acts of the twenty-first year of the reign of King James the First, chapter sixteen, section three, and of the act of the third and fourth years of the reign of King William the fourth, chapter forty-two, section three, and of the act of the sixteenth and seventeenth years of the reign of her present Majesty, chapter 118, section twenty, where there shall be two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor, or administrator shall lose the benefit of the said enactments or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money, by any other or

others of such co-contractors or co-debtors, executors, or administrators.

15. In order to enable the superior courts of common law at Westminster and Dublin, and the judges thereof respectively, to make rules and regulations, and to frame writs and proceedings, for the purpose of giving effect to this act, the 223rd and 224th sections of "the Common Law Procedure Act, 1852," shall, so far as this act is to take effect in England, and the 238rd and 240th sections of "the Common Law Procedure Amendment Act (Ireland), 1853," shall, so far as this act is to take effect in Ireland, be incorporated with this act, as if those provisions had been severally herein repeated and made to apply to this act.

16. In citing this act it shall be sufficient to use the expression "the Mercantile Law Amendment Act, 1856."

17. Nothing in this act shall extend to Scotland.

#### EVIDENCE IN MATTERS PENDING BEFORE FOREIGN TRIBUNALS.

19 & 20 Vic. c. 118.

1. Order for examination of witnesses in this country in relation to any civil or commercial matter pending before a foreign tribunal.
2. Certificate of ambassador &c., sufficient evidence in support of application.
3. Examination of witnesses to be taken upon oath; Persons giving false evidence guilty of perjury.
4. Payment of expenses.
5. Persons to have right of refusal to answer questions and to produce documents.
6. Certain courts and judges to have authority under this act; Lord Chancellor, &c. to frame rules, &c.

The following are the title, preamble, and sections of the act:—

An Act to provide for taking Evidence in her Majesty's dominions in relation to Civil and Commercial matters pending before Foreign Tribunals. [29th July, 1856.]

WHEREAS it is expedient that facilities be afforded for taking evidence in her Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where, upon an application for this purpose, it is made to appear to any court or judge having authority under this act that any court or tribunal of competent jurisdiction in a foreign country, before which any civil or commercial matter is pending, is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination upon oath, upon interrogatories or otherwise, before any person or

persons named in such order, of such witness or witnesses accordingly; and it shall be lawful for the said court or judge, by the same order, or for such court or judge or any other judge having authority under this act, by any subsequent order, to command the attendance of any person to be named in such order, for the purpose of being examined, or the production of any writing or other documents to be mentioned in such order, and to give all such directions as to the time, place, and manner of such examination, and all other matters connected therewith, as may appear reasonable and just; and any such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge.

2. A certificate under the hand of the ambassador, minister, or other diplomatic agent of any foreign power, received as such by her Majesty, or in case there be no such diplomatic agent, then of the consul general or consul of any such foreign power at London, received and admitted as such by her Majesty, that any matter in relation to which an application is made under this act is a civil or commercial matter pending before a court or tribunal in the country of which he is the diplomatic agent or consul having jurisdiction in the matter so pending, and that such court or tribunal is desirous of obtaining the testimony of the witness or witnesses to whom the application relates, shall be evidence of the matters so certified; but where no such certificate is produced, other evidence to that effect shall be admissible.

3. It shall be lawful for every person authorized to take the examination of witnesses by any order made in pursuance of this act to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorized; and if upon such oath or affirmation any person making the same wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury.

4. Provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial.

5. Provided also, that every person examined under any order made under this act shall have the like right to refuse to answer questions tending to criminate himself, and other questions, which a witness in any cause pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made would be entitled to; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause.

6. Her Majesty's superior courts of common law at Westminster and in Dublin respectively, the court of session in Scotland, and any supreme court in any of her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who by any order for her Majesty in council may be appointed for this purpose, shall respectively be courts and judges having authority under this act: provided, that the Lord Chancellor, with the assistance of two of the judges of the courts of common law at Westminster, shall frame such rules and orders as

shall be necessary and proper for giving effect to the provisions of this act, and regulating the procedure under the same.

## LAW OF DIVORCE AND MATRIMONIAL CAUSES.

### LORD LYNDHURST'S SPEECH.

CONNECTED with the abolition or reform of the Ecclesiastical Courts, in *testamentary* matters, is essentially associated the amendment of the jurisdiction in *divorce and matrimonial causes*. We deem it necessary to put on record Lord Lyndhurst's speech in the last session, in support of the bill then before the House of Lords.

Lord Lyndhurst said:—Before going into committee I wish shortly to state the substance of this bill as it has come down to your lordships' House from the select committee, and I must not think that your lordships will approve the amendments suggested by that committee. The great object which the committee had in view, and which the framers of the original measure had in view, was to establish a separate tribunal for deciding upon matrimonial causes. When the constitution of that tribunal was considered in committee, we came to the conclusion that it should be composed of the Lord Chancellor, the three chief judges of the courts of common law, and the Dean of the Arches; that the Dean of the Arches might sit alone in cases such as those which at present came under his jurisdiction; but that causes for divorce *à vinculo matrimonii* should be decided by the full court, or rather by a quorum of the court. It further appeared to us, that the appeal from the decision of the Dean of the Arches should be heard before the whole court, while appeals from the full court should be brought before your lordships' House; such appeals to be founded not upon questions of fact, but upon points of law.

I think that your lordships, after considering the composition of that tribunal, will agree with the opinion of the committee, that it will be likely to answer the purpose which we had in view. It will be a court dignified by rank, full of talent, and not more competent than a court ought to be, which is called upon to decide questions of such vast importance. So much, then, with respect to the constitution of the tribunal, which I think your lordships will consider to be satisfactory.

I come now to the alteration in the existing law which the committee propose. As the law at present stands, a woman divorced from her husband on her own petition on account of adultery, cruelty, or other misconduct on the part of her husband is placed in this situation,—that whatever property she may acquire by her own industry and skill, or whatever property may devolve upon her, becomes at once the property of her husband, and is not infrequently employed by him, not in the support of his wife, but in the support of a mistress. Now, my lords, the committee considered that it would be most desirable to put an end to that state of things, and they decided unanimously that a woman divorced *à mens et thoro* from her husband, who afterwards acquires property, shall retain it to her own separate use, and may dispose of it by grant or by will or in any way in which she pleases. I think that your lordships will be of opinion with the committee, that such a provision is imperatively required by justice.

Another great hardship of the present system is, that a woman separated from her husband, in case of injury or in other cases, cannot maintain an action in her own name, and the committee came to the conclusion that a woman divorced *à mensu et thoro* from her husband ought to be allowed to come into a court of law as a *feme sole*. I think that your lordships will be of opinion that such an alteration in the present law would be wise and beneficial; and I beg leave to say that, from the conversations which I have had with my noble and learned friend on the woolsack, I think that it has passed through his mind that such a provision should be inserted in the bill.

I now come to the third point—the action for damages in cases of adultery—an action which I consider and which I think many of your lordships will consider to be of a most scandalous character. I proposed, my lords, in that committee, to abolish the action for damages, but the opinion, although not the unanimous opinion of the committee, was against me upon that point. I afterwards proposed that, for the action for damages a prosecution should be substituted, and I am quite sure that a prosecution would be more effectual in preventing adultery than the action for damages—an action which is a scandal to a civilized country, and which excites the horror and disgust of other countries, and which at the same time is an action involving a great hardship and injustice to the woman, who is not allowed to appear either in person or by counsel, and who thus may, by the combination of her husband and another person, become a victim without a remedy. Such a state of things is contrary to all principles of justice. In the Court of Chancery, if it be suggested that any person not then in the suit is in the slightest degree interested in it, the suit is suspended until he is made a party to it. The committee came, I think, to a most unfortunate decision upon that point. I shall presently propose a motion with respect to it, and I trust that your lordships will take the matter into your most serious consideration. I find that in actions of this kind judgments constantly go by default, upon the understanding that the damages shall be refunded; and it is said that I shall inflict a hardship upon some persons by carrying out my proposition upon this subject; but, when hardships are spoken of, permit me to call to your lordships' recollection the substance of a curious petition which was presented some time since by a noble and learned friend of mine not now present, and for

the accuracy of the statements contained in which he vouched. In the case to which the petition related an action for adultery was brought, a verdict was obtained by the plaintiff, nominal damages were given, and the lady lost her character and was driven out of society. After a lapse of 18 months or two years she contrived to prove to the satisfaction of the court that there was not the slightest foundation for the accusation. In such a case, I submit to your lordships the hardship of a woman losing her character and being driven from society, without an opportunity being afforded her of being heard, or of examining witnesses in her defence.

In a fourth point of great importance, the committee, although they have not gone quite so far as I wished, have advanced considerably in the way of reform, and with the view of protecting the rights and interests of women. I thought that it was consistent with scripture, consistent with the law, and consistent with reason, that the wife should be put on the same footing as the husband in proving cases of adultery. Such an equality would be in accordance with the known law of Scotland, and evidence was adduced to show that no inconvenience resulted from placing the husband and wife on the same footing in that respect. I cited many authorities in support of that opinion, and ultimately the committee went so far as to decide that, in all cases of adultery accompanied with cruelty, in cases of incestuous adultery, and in cases of bigamy, the wife was entitled to a divorce. I very much thank the committee for having gone so far as they have in this matter, although I would fain have persuaded them to go a little further. I thought, for instance, that where adultery was committed and the husband was charged with felony and sentenced to be transported, so that the object of marriage was defeated, the wife ought to have an opportunity of obtaining a divorce. However, I am thankful for the amendments in this direction which have been made.

There is one more point only in which the committee made any material alteration in the bill as it went before them. The bill provided that the wife should be entitled to alimony after four years' desertion by her husband, and the committee have shortened that period, and have decided that she should be entitled to alimony after a desertion of two years. With these observations, I trust that this bill, which I regard as an important step in the right direction, will shortly become the law of the land.

## PARLIAMENTARY RETURN.

KING'S INNS, DUBLIN.

It will be observed from the following account, that the attorneys and solicitors of Ireland contribute a considerable annual sum to the inn of court there, and that the benchers receive from the Stamp-office a certain proportion (about one-fifth) of the duty paid on attorneys' indentures or articles of clerkship. On the other hand, it appears that the benchers have provided rooms in the buildings connected with the four courts for the exclusive use of the attorneys, and for furnishing the same and stocking their library. They have also provided reception rooms as well for attorneys as barristers.

In the forthcoming plan for the improvement of the course of legal education in England it is worth considering whether this precedent should not be followed, and contributions made by the Inland Revenue

Office out of the taxes received from attorneys, for the purpose of extending the means of legal education to that branch of the profession.

A RETURN of all Monies received by the Honourable Society of the King's Inns in Dublin, in each year, since the 30th June, 1839, from Students at Law; similar account of all Moneys received on the Admission of Barristers; similar Account of all Sums received from Attorneys' Apprentices; similar Account of all Sums received on the Admission of Attorneys; and, a similar Return of all Sums received from the Stamp Office, being a portion of the Stamp Duty received on Attorneys' Indentures to the end of Trinity Term, 1856:—

—	1839.	1840.	1841.	1842.	1843.	1844.	1845.	1846.	1847.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Students ...	226 6 8	1284 1 4	813 6 8	1317 12 0	1301 12 0	1073 12 0	1089 17 0	899 12 0	601 17 4
Barristers ...	953 2 0	3524 6 3	2173 17 6	1712 15 0	1416 6 3	1815 15 0	1668 8 9	1613 18 9	1548 1 3
Apprentices ...	142 5 4	607 0 5	617 0 0	503 10 4	490 14 5	575 12 4	563 4 6	513 7 0	362 9 5
Attorneys ...	632 17 5	1641 1 3	1437 12 6	1532 11 3	1515 8 9	1553 17 6	1872 13 8	1261 6 2	1220 17 9
Stamp duty on Attorneys' Indentures...	868 0 0	1180 0 0	1218 0 0	1620 0 0	1090 0 0	1426 0 0	1344 0 0	1482 0 0	1022 0 0
—	1848.	1849.	1850.	1851.	1852.	1853.	1854.	1855.	1856.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Students ...	536 16 0	487 16 0	756 7 4	467 1 8	537 18 0	430 6 8	559 8 8	365 15 8	86 1 4
Barristers ...	1516 6 3	1350 8 9	866 7 0	592 17 6	625 16 3	734 12 6	658 14 0	790 10 0	230 11 3
Apprentices ...	327 14 2	215 18 4	296 5 10	211 16 5	200 1 2	160 5 8	244 10 6	180 19 4	102 6 0
Attorneys ...	1347 15 0	1193 10 0	976 10 0	800 3 9	691 13 9	769 10 0	654 0 0	583 3 9	271 5 0
Stamp duty on Attorneys' Indentures...	854 0 0	868 0 0	632 0 0	644 0 0	568 0 0	328 0 0	866 0 0	574 0 0	294 0 0

The sums received as appropriated duties cannot be deemed as payments made by either branches of the Profession, the same having been, so far back as the year 1796, granted by the Government as an equivalent for a rent to the society for the ground on which the Four Courts of Justice on the Inns' Quay were erected, and which was the property of the Society, which grant has been since that time confirmed by the 36 Geo. 3, and 5 & 6 Victoria.

A RETURN of the Annual Expenditure of the Honourable Society of King's Inns since the 30th June, 1839, to the end of Trinity Term, 1856, which consists of the following Heads of Disbursements; viz., Rents, Taxes, Library, Officers' Salaries, and every Expense connected with Housekeeping, and the Society's Establishment, as set forth in the following Table marked No. 1.

## ORDINARY EXPENSES.

## NUMBER 1.

1839.	1840.	1841.	1842.	1843.	1844.	1845.	1846.	1847.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
2012 2 0	5226 6 7	5448 14 5	5740 13 10	6034 15 6	5387 13 8	6112 17 4	6683 16 8	6776 9 8
1848.	1849.	1850.	1851.	1852.	1853.	1854.	1855.	1856.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5441 6 6	5356 16 5	5512 2 8	5959 13 1	5262 16 7	4985 7 10	4830 13 6	4427 1 0	3822 13 1

## EXTRAORDINARY EXPENDITURE.

The following Sums, amounting to the Sum of £51,056 18s. 3d., as set forth in the Table No. 2, expended in the purchasing the interest of Lands held by the Society under the Representatives of Lord Blessington and Robert Courtney, Esq., on part of which the King's Inns are erected; in discharging the residue of Accounts for erecting Buildings at Rear of the Four Courts, in which are several Apartments allocated exclusively for the use of the Profession of Attorneys and Solicitors generally, and the cost of furnishing same; and also a Grant made to them as an outfit for stocking their Library (besides a large Number of Law Books out of the Library at the King's Inns); likewise a grant made to the principal of the late Law Institute; the erection of a Building at the King's Inns for Lectures for Students and the Profession generally, in which are Reception Rooms for both Barristers and Attorneys; and also Grants for Superannuated Servants of the King's Inns, and Grants for Charitable purposes.



## NUMBER 2.

1839.	1840.	1841.	1842.	1843.	1844.	1845.	1846.	1847.
£ s. d. 468 2 2	£ s. d. 1508 4 4	£ s. d. 2670 13 7	£ s. d. 3522 5 9	£ s. d. 3321 1 6	£ s. d. 3552 7 8	£ s. d. 3085 1 11	£ s. d. 2121 14 3	£ s. d. 19694 3 3
1848.	1849.	1850.	1851.	1852.	1853.	1854.	1855.	1856.
£ s. d. 4244 8 9	£ s. d. 907 7 10	£ s. d. 984 7 10	£ s. d. 1141 6 9	£ s. d. 907 17 3	£ s. d. 898 1 4	£ s. d. 989 17 5	£ s. d. 854 17 5	£ s. d. 486 9 3

No account can be rendered for the building of Chambers "for the exclusive use or benefit of the Attorneys of Ireland;" all moneys received by the Society merge into a general fund, by which the Benchmen are enabled to discharge the liabilities of the Society as set forth in the foregoing Accounts.

The Total Sum expended in purchasing the ground on which the buildings at the rear of the Four Courts are erected, and in which are the apartments for the exclusive use of the Attorney Profession, referred to in the Note prefixed to Account No. 2, amounts to the sum of £26,040 5s. 8½d., besides an outlay of £15,000 5s. 9d. for purchasing head rents, also referred to in the said Note.

## LAW OF COSTS.

## EXPENSES OF ALLEGED CONTRIBUTORY, UNDER WINDING-UP ACTS, SUMMONED AS WITNESS.

THE respondent, an "alleged contributory," was applied to on behalf of the official manager to admit his execution of the company's deed, and was informed that if he did not, the costs of proving the execution would come out of the assets. He declined, and was summoned to attend as a witness before the Master under the 11 & 12 Vict. c. 45, s. 68, but he disobeyed the summons, and there appeared every probability of his being a contributory. The Vice-Chancellor Stuart (2 Smale and G. 87) held, that as his travelling expenses had not been tendered to him, his failure to attend did not amount to a contempt. On the hearing of an appeal the respondent's counsel admitted the execution of the deed.

On the question of costs, L. J. Turner said—

"It seems to me that the question of the act of 1849 has no application whatsoever to this question, and that it depends entirely on the 64th section of the act of 1848. If it was necessary to decide the point, I am very much disposed to think that the official manager was wrong in not having tendered the costs under the 64th section of the act of 1848. The first branch of the section is,—'That every person summoned before the Master as a witness shall be entitled to such costs and charges as are by law allowed to witnesses;' and the costs and charges which are by law allowed to witnesses are costs and charges which are payable to them immediately upon their being served with a summons. The second branch of the section is,—'but that where any person, who at the time of the order absolute was a contributory of such company, shall be summoned as aforesaid, every such person shall have such costs and charges only, if any, as the Master in his discretion shall think fit.' And I incline to the construction of the act for which Mr. Daniel has contended, viz., that this second branch of the section applies to persons who have been ascertained to be contributories. Otherwise the operation of the first branch of the section would, as it seems to me, be

wholly prevented; for it must be impossible to say when a person is served before he is upon the list of contributories, whether he will or will not have been a contributory at the time of the order absolute being made. I give no opinion on the question whether it may not be competent for the master to suspend payment of costs to a witness before that witness is summoned. The act may have contemplated cases in which there might be no funds enabling the official manager to pay the costs of witnesses necessary to be examined for the purpose of ascertaining the amount of the assets of the company, and the latter part of the clause may have been intended to provide for such cases by empowering the Master to suspend the payment of costs.

Although, however, if it was necessary to decide the question, I should probably hold that the official manager was wrong in not tendering the costs to the witness at the time of the summons being served upon him; still as Mr. Mercer was served with the summons, and also with the proposed admission, and well knew, as he must have done from the tender of the admission, the purpose for which he was summoned, I cannot consider him as having acted rightly in not having taken any notice either of the summons or of the admission. I think that he is not entitled to any costs, because it is his conduct which has led to the application. My opinion concurs with that of my learned brother, that the costs of the official manager ought to come out of the estate, and that Mr. Mercer should have no costs of the application."—*In re Northern and Southern Connecting Railway Company, ex parte Mercer*, 5 De G. M. & N. and G. 26.

## LAW OF VENDOR AND PURCHASER.

## PAYMENT OF DEPOSIT BY A CERTAIN TIME—CONCLUDED AGREEMENT—SPECIFIC PERFORMANCE.

CERTAIN property at Wimbledon having been advertised for sale by private treaty, the plaintiff's solicitor, on March 8, 1855, wrote to the agent of the defendant (Mr. Marryat) that he was instructed to make him an offer of £25,000 for the purchase of the estate. On April 4 the defendant's agent wrote in

reply that he was authorised to accept the offer, subject to the terms of a contract being arranged between their two solicitors, and requiring a deposit of from £1,200 to £1,500, and the completion of the purchase by the next Midsummer-day. The defendant's solicitor on the following day sent the plaintiff's solicitor a draft agreement for his perusal, in which a deposit of £1,500 was to be paid at the date of the contract. On April 20 the draft was returned approved, with the exception of the deposit being reduced to £1,200, and in reply the defendant's solicitor wrote that unless the contract was completed, and the deposit of £1,500 paid before April 24, the treaty would be considered at an end. This day was afterwards extended to the 26th, in consequence of the plaintiff being out of town, but his solicitor wrote that before the agreement was signed there was a question to be settled as to the amount of the deposit. The defendant's solicitor then wrote that his client (Mr. Marryat) declined to sell without payment of a deposit for £1,500, and ultimately fixed April 27 for payment, and refused to allow the matter to stand over until May 2, as requested by the plaintiff's solicitor. The deposit was not paid by the time fixed, and on the 28th the defendant's solicitor declared the treaty was at an end, and declined to renew it. The plaintiff, however, on May 5, tendered the £1,500, and offered to sign the agreement, and on the defendant insisting that the treaty was at an end, this bill was filed for a specific performance.

The *Master of the Rolls* (after stating the facts) said—"The question really is, whether in that state of circumstances the contract was ever concluded? What I have already stated shews, that in my opinion, it was not, and that it was open to either side, consistently with the terms already agreed upon by the first two letters, to add fresh stipulations to the proposed contract, until the terms proposed by either side had been definitively accepted by the other. Mr. Marryat did propose and insist on a term to be added to the contract, which was not agreed to or accepted, and which it has now become impossible to comply with. If the term had been an unreasonable one: if it had been one that had been manifestly made for preventing the contract being entered into, then a different view of this case might have arisen, which at present, in my opinion, it does not admit of. The aspect of the case would then have been changed, and might have been different from what it appears at present.

"The case is complicated from this circumstance:—that the term relates to the time when the deposit money shall be paid, and the Court of Chancery does not, except in very special cases, allow time to be of the essence of the contract. But the distinction between this case and the cases which relate to time being of the essence of the contract is this,—that in the latter cases there is a concluded agreement, a contract actually entered into, and then the Court considers it inequitable that, by reason of a slight delay, one party to the contract should not have the benefit of that for which he has contracted. But that is a totally different matter from this: whether a person is not at liberty to make a contract in which time shall be introduced as one of the terms of

the contract? I look at it exactly in this point of view, as if Mr. Marryat had said—"I require, as one of the terms of the contract, that the deposit shall be found on or before the 24th or 25th of April," and the opposite party had said, 'I agree to all the terms of the contract except that, for I shall not be able to pay the deposit within that time: I shall not be able to pay it until the 3rd of May.' The question is, whether, under those circumstances, Mr. Marryat, under the terms of these first two letters, would have been bound to enter into such a contract. I am of opinion that he would not; and whatever might be the effect of such a contract when once entered into, to say that he should not be allowed to insist on such a stipulation forming part of the contract, would be going far beyond any of those cases in which the Court has regarded time as not of the essence of the contract. It would go to this extent, that a person might not contract that time should be of the essence of the contract. In my opinion, this agreement was not concluded; this was a term which he chose to have added, which was not an unreasonable term, and was not introduced for the purpose of making it impossible for the other party to enter into the contract. My opinion is, therefore, that there was no concluded agreement between both parties, and that this demurrer must be allowed."

*Honeyman v. Marryat*, 21 Beav. 14.

## AUTHORITY OF COUNSEL TO CONSENT TO COMPROMISE.

On an objection that a compromise entered into by the counsel for the respective parties was without the authority or consent of the plaintiff. *Cresswell, J.*, said—

"I think the Court cannot for a moment listen to an objection of that sort; and I am glad to find that there is abundant authority for our holding that the client is absolutely and conclusively bound by what the counsel on her behalf assented to. I think it would be most fatal to the due administration of justice if we were to allow the authority of counsel to be thus questioned. And there is not any hardship or inconvenience in this: for, if the client or the attorney has reason to think that the counsel is taking a course that will prejudice his interests, he may withdraw his brief, and so put an end to his authority to represent the client before the Court. But, if counsel, duly instructed, take upon himself to consent to a compromise which he, in the exercise of a sound discretion, judges to be for the interest of his client, the Court will not inquire into the existence or the extent of his authority. I am extremely happy to find that the decisions abundantly bear us out in thinking this objection cannot be permitted to prevail." *Swinfen v. Swinfen*, 18 Com. B. 503.

## FEES FOR REGISTERING JOINT STOCK COMPANIES.

*Under the 19 & 20 Vict. c. 47.*

For registration of a company whose nominal capital does not exceed £1,000.	£	s.	d.
	5	0	0
For every £1,000 of nominal capital, or part of £1,000, after the first £1,000, and up to £100,000, an additional fee of	0	5	0
For every £1,000 or part of £1,000 after the first £100,000, an additional fee of	0	1	0

	£	s.	d.
For registration of any increase in the capital of a company for every £1,000 or part of £1,000, up to £100,000 in the whole . . . . .	0	5	0
For every £1,000 or part of £1,000 beyond the first £100,000, an additional fee of . . . . .	0	1	0
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association . . . . .	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of . . . . .	0	5	0

### CANVASSING FOR PROFESSIONAL BUSINESS.

It is a well-understood rule that attorneys and solicitors must not canvass for professional business. There is an exception, however, in the case of a solicitorship to a public society or company, and we have heard of several occasions on which eminent firms have competed for such offices. But of late it appears that the changes which have taken place in consequence of various law reforms, have given rise to new struggles for particular classes of business. Amongst these, we have a circular issued by Messrs. Roberson and Maddox, describing themselves as "Joint-Stock Companies' Solicitors," from which we make the following extracts for the consideration of our correspondents:—

"Having long devoted our attention to that branch of the law relating to joint stock companies, in the business of which our firm has acquired considerable experience, we have determined to make this fact generally known to the profession.

"We therefore beg to state that we shall be prepared to act as *agents to solicitors* in the registration of joint stock companies, and in all business (legal and practical) relating thereto.

"This business being of an exceptive character, solicitors are not generally so well acquainted therewith as with other branches of the law. It must, therefore, be of considerable advantage to the profession that they should put themselves in communication with gentlemen who have made it their particular study.

"By so doing, we need hardly say, that much valuable time may be saved and thus a greater amount of profit realised.

"With these observations we beg to refer you to our *detailed prospectus* on the other side."

"The following matters of business relating to Joint Stock Companies are transacted at our office, viz.:—

"*The Formation and Registration of Joint Stock Companies.*

"Under *Registration* is comprised—

"The preliminary establishment of companies, and advice thereon.

"The drawing and settling of prospectuses, advertisements, letters of allotment, scrip certificates, and advice thereon.

"The drawing, settling, and stamping of memorandum of association and articles of association, and advice thereon.

"Returning the various documents and registering the company.

#### "After Registration.

"Preparing, settling, and stamping certificates of shares, transfers, proxies, &c

"Obtaining licenses to hold lands (when required).

"Drawing and settling notices of meetings and drafts of special resolutions, and advice thereon.

"Drawing, settling, and advising on alteration of regulations in table B. of act, and articles of association.

"Registering periodical and other returns, notices and documents after incorporation.

"Inspecting and obtaining extracts from companies' register of shareholders, returns, and other documents.

"Making application for rectification of companies' register of shareholders."

"Drawing and settling companies' powers of attorney, mortgages, conveyances, and other deeds, and advice thereon.

#### "As to Examination of Affairs of Company.

"Making application to the Board of Trade for examination of companies' affairs.

"Attendance and advice on inspection, settling inspectors' reports, &c.

#### "Winding-up of Companies by Court.

"Taking proceedings to wind-up companies, advice on liability of shareholders, making application to strike out name of contributories.

"Acting as solicitors to official liquidators, &c., &c.

#### "Voluntary Winding-up.

"Acting generally for companies, official liquidators, and shareholders.

#### "Legal Proceedings.

"Defending companies against penalties, bringing actions for calls, and taking all other proceedings for or against companies.

#### "Existing Companies and Partnerships.

"Registering existing companies and partnerships under the 19 & 20 Vic. c. 47.

"Transacting all other business of existing companies.

#### "Generally.

"Drawing and settling solicitors' bills of costs against companies.

"Dissolving, amalgamating, and re-forming companies.

"Transacting every department of business (legal and practical) relating to public companies.

"All the registration forms and books required by public companies are published at our office, and will be sent to any part of the Kingdom."

### LEGAL OBITUARY, 1855-6.

#### ATTORNEYS AND SOLICITORS.

[The names marked thus \* were members of the Incorporated Law Society.†]

Adamson, John, of Newcastle-on-Tyne (firm—J. W.

† The *Barristers' Obiuary* will be given in an early number.

- and C. M. Adamson), Secretary to Newcastle and Carlisle Railway. Admitted on the Roll, Hil. Term, 1809. Died, September, 1855.
- Archer*, Henry Thomas, of 2, Church-court, Clement's-lane, and 6, Raquet-court, Fleet-street. Admitted on the Roll, Easter Term, 1826.
- Artindale*, Robert, of Burnley. Clerk to the Petty Sessions and Magistrates at Burnley (firm—Artindale and Shaw). Admitted on the Roll, Hil. Term, 1828. Died, February 5, 1855.
- Ashurst*, William Henry, of 6, Old Jewry (firm—Ashurst, Son, and Morris). Admitted on the Roll, Michaelmas Term, 1821. Died, October 18, 1855.
- Atkinson*, John, of Leeds (firm—Atkinson, Dibb, and Atkinson). Admitted on the Roll, Hil. Term, 1821. Died, November 15, 1855.
- Backhouse*, Richard, of Blackburn. Admitted on the Roll, Hil. Term, 1841. Died, January 8, 1855.
- Bainbridge*, Robert, of Alston (firm—B. and N. Bainbridge). Admitted on the Roll, Mich. Term, 1799. Died, Oct. 1866.
- Baines*, Robert Henry, of 87, Southampton-buildings (firm—Crouch, Baines, and Hooper). Admitted on the Roll, Hil. Term, 1831. Died, March, 1856.
- Baster*, Charles, of Abingdon. Admitted on the Roll, Hil. Term, 1811. Died, May, 1855.
- Bicknell*, Christopher (firm—C. and S. Bicknell), of 79, Connaught-terrace, Edgware-road. Admitted on the Roll, Easter Term, 1838. Died May, 1855.
- Bond*, Edward, of Lichfield. Clerk to the Magistrates (firm—E. and F. Bond and Barnes). Admitted on the Roll, Mich. Term, 1816. Died, October 11, 1855.
- Brackenbury*, Bennet, of Gainsborough (firm—Heaton, Brackenbury, and Oldman). Admitted on the Roll, Easter Term, 1838. Died, January, 1855.
- Braikenridge*, W. of 16, Bartlett's-buildings, Holborn (firm—W. Braikenridge and Sons). Admitted on the Roll, Hil. Term, 1812. Died, February 26, 1856.
- Bramwell*, Thomas Vicars, of Stockport. Admitted on the Roll, Easter Term, 1846. Died May, 1855.
- Brassey*, John, of 7, Tokenhouse-yard. Admitted on the Roll, Mich. Term, 1853.
- Broad*, Joseph, of Tunstall. Agent to the American Consul for verifying invoices to the United States. Admitted on the Roll, Hil. Term, 1853. Died, January 26, 1855.
- Brown*, John, of Sheffield. Distributor of Stamps for the Sheffield district (firm—J. and W. Brown). Admitted on the Roll, Hil. Term, 1806. Died in 1854.
- Burder*, John (firm—Burder, Son, and Dunning), of 27, Parliament-street. Admitted on the Roll, Mich. Term, 1818. Died, April, 1854.
- Burfield*, Walker, of Bingley, Yorkshire. Admitted on the Roll, Hil. Term, 1835. Died, September, 1855.
- Callow*, Joseph, of 4, College-hill, City. Admitted on the Roll, Easter Term, 1826. Died, October, 1855.
- Cameron*, John Campbell (firm—Cameron & Booty), of 1, Raymond-buildings, Gray's Inn. Admitted on the Roll, Trin. Term, 1800. Died, May 7, 1855.
- Cause*, Edward, of Bury St. Edmunds. Clerk to the Governors of Free Grammar School, and Clopton's Asylum, and Sittlon's Charity. Admitted on the Roll, Trin. Term, 1824. Died, December, 1855.
- Chambers*, Robert Byron, of 11, Tokenhouse-yard, City. Admitted on the Roll, Hil. Term, 1829.
- Chaplin*, John Clarke, of Birmingham (firm—Chaplin, Richards, and Stubbin). Admitted on the Roll, Hil. Term, 1828.
- Charsley*, John, of Beaconsfield (firm—Charsley and Parton). Admitted on the Roll, Mich. Term, 1804. Died, March, 1855.
- Chew*, Townley, of Manchester (firm—T. H. and T. Chew). Admitted on the Roll, Hil. Term, 1848.
- Clark*, George, of 28, Finsbury-place North (firm G. and G. H. Clark). Admitted on the Roll, Easter Term, 1823.
- Cobb*, Charles Francis, of 62, Moorgate-street, City (firm—Simpson, Cobb, Roberts, and Simpson). Admitted on the Roll, Trin. Term, 1826.
- Colley*, William, of 16, Bucklersbury. Admitted on the Roll, Mich. Term, 1839.
- Cooper*, Thomas, of Kidderminster. Admitted on the Roll, Hil. Term, 1854. Died, April 14, 1855.
- Cowburn*, John, of Settle, Skipton, and Barnoldswick. Clerk to the Magistrates. Admitted on the Roll, Mich. Term, 1832. Died, February 20, 1855.
- Curtis*, Charles Archer, of Abingdon. Clerk to the Justices of Abingdon Division; Clerk to the Trustees of Turnpike Roads, and Clerk to Commissioners of Taxes (firm—C. A. and T. J. Curtis). Admitted on the Roll, Hil. Term, 1826. Died, July, 1855.
- Davies*, Robert, of Wells, Somerset. Town Clerk, Clerk to the Magistrates, and Registrar to the Borough Court (firm Davies and Foster). Admitted on the Roll, Easter Term, 1819. Died, July 31, 1855.
- Douglass*, James Ley, of Market Harborough. Admitted on the Roll, Hil. Term, 1819. Died, December, 1855.
- Edge*, Matthias, of Ormakirk. Admitted on the Roll, Mich. Term, 1832. Died, 1855.
- Edmondes*, William, of Cowbridge and Lantrissant (firm—Edmondes and Stockwood). Clerks to the Magistrates of the division of Miskin Lower and Cowbridge. Admitted on the Roll, Hil. Term, 1833. Died, April 21, 1855.
- Evans*, William, of 4, Wintoun-place, Blackheath-road. Admitted on the Roll, Hil. Term, 1828.
- Faux*, Gregory, of Thetford. Admitted on the Roll, Easter Term, 1828. Died, June, 1855.
- Francis*, William Wallis, of Colchester (firm—F. & W. W. Francis). Admitted on the Roll, Hil. Term, 1810. Died, April 18, 1855.
- Fraser*, Michael, of 2, Furnival's Inn, and Manor Cottage, Walworth (firm—M. Fraser and Son). Admitted on the Roll, Mich. Term, 1816. Died, September 26, 1855.
- Furner*, Frederick, of 13, Providence-place, Upper Kennington-lane. Admitted on the Roll, Trin. Term, 1830. Died March 16, 1856.
- Gem*, William Henry, of Birmingham. Admitted on the Roll, Mich. Term, 1823. Died, December 3, 1855.
- Golding*, Samuel, of Walsham-le-Willows, near Ixworth (firm—S. and T. M. Golding). Admitted on the Roll, Trin. Term, 1809. Died, May 24, 1854.
- Gordon*, Patrick, of 8, Symond's Inn, Chancery-lane (firm—Gordon and Grant). Admitted on the Roll, Trin. Term, 1819. Died, March 18, 1855.
- Graham*, James, of Carlisle. Admitted on the Roll, Mic. Term, 1845. Died, March, 1855.
- Grane*, William, of 23, Bedford-row (firm—Grane, Son, and Fessenmeyer). Admitted on the Roll, Trin. Term, 1812. Died, July 25, 1856.

*Griffith, Wm., of Llanrwst, Denbighshire.* Admitted on the Roll, Mich. Term, 1835. Died, June, 1855.

*Grundy, Samuel, of Bury, Lancashire.* Admitted on the Roll, Mich. Term, 1817. Died, January 2, 1856.

*Harman, Charles, of High Wycombe.* Town Clerk and Chief Clerk to the County Court. Admitted on the Roll, Trin. Term, 1880. Died, November, 1855.

*Harris, James, of Bristol.* Clerk to the Commissioners of Sewers. Admitted on the Roll, Trin. Term, 1812. Died, June, 1855.

*Harvey, Joseph, of Gloucester (firm—Harvey and Abell).* Admitted on the Roll, Easter Term, 1837. Died, July, 1855.

*Herring, Charles Thomas, of Bedale.* Clerk to the Magistrates and Clerk to the Guardians. Admitted on the Roll, Easter Term, 1845.

*Hirst, Edwin, of Ripon.* Admitted on the Roll, Mich. Term, 1855.

*Holland, James, of Preston.* Admitted on the Roll, Trin. Term, 1814. Died, July 24, 1855.

*Hollier, John, of Thame.* Admitted on the Roll, Mich. Term, 1807. Died, August 14, 1855.

*Holme, Bryan, of 10, New Inn (firm—Holme, Loftus, and Young).* Admitted on the Roll, Hil. Term, 1800. Died, July 15, 1856. (See Memoir, at page 281.)

*Holmes, Joseph Hauby, of Bury St. Edmunds.* Town Clerk and Clerk of the Peace (firm—Jackson, Sparke, and Holmes). Admitted on the Roll, Easter Term, 1836. Died in 1855.

*Hustler, Orbell, of Halsted.* Clerk to the Magistrates and the Union and Superintendent Registrar of Marriages, Births, and Deaths. Admitted on the Roll, Mich. Term, 1816. Died, September 8, 1855.

*Hyde, John Brooke, of Worcester (firm—Hyde, Hyde, and Tymbe).* Admitted on the Roll, Easter Term, 1821. Died, October, 1855.

*James, Morgan Rice, of Haverfordwest.* Clerk to County Lieutenant and Magistrates. Admitted on the Roll, Mich. Term, 1830. Died, October, 1855.

*Jarvis, James, of Lynn.* Admitted on the Roll, Trin. Term, 1804. Died, December, 1854.

*Jones, Alfred Alexander, of 9, Quality-court, Chancery-lane.* Admitted on the Roll, Mich. Term, 1851. Died in 1856.

*Jones, Griffith, of Pwllheli.* Clerk to the Magistrates. Admitted on the Roll, Mich. Term, 1804. Died, May 9, 1855.

*Jones, William, of 65, St. Paul's Church-yard.* Admitted on the Roll, Hil. Term, 1825.

*Kenson, Henry, of Blackburn.* Admitted on the Roll, Hil. Term, 1841.

[To be continued.]

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Farriss v. Silverlock, July 9, 1856.*

INJUNCTION—PRINTING OF LABELS—TRADE MARKS—LEGITIMATE USE.

Held, reversing the decision of Vice-Chancellor Wood, that an injunction will not be granted to restrain the printing of labels similar to those used by the plaintiff in the sale of his manufacture, where they are also legitimately used in the sale of the plaintiff's own commodity, although the sale of a spurious article having such labels will be restrained.

THIS was an appeal from the Vice-Chancellor Wood (reported 1 Kay. and J. 509) making perpetual an injunction to restrain the defendant, a printer, from printing or selling any labels similar to those in use by the plaintiff, the manufacturer of eau de Cologne, upon his bottles.

*Willcock and Buxton* in support; *Daniel and Hetherington* contra.

The Lord Chancellor said that the equity was founded upon the jurisdiction of this court to give relief by way of preventive justice for the purpose of rendering more effectual the legal right to have a particular trade mark for any commodity. This right was not a copyright, but was to prevent any other person from selling wares, not manufactured by the party designating his commodities with a particular trade mark, with such trade mark or a colourable imitation of it, for the purpose of misleading the public. It was, however, alleged by the defendant, and was not contradicted by the plaintiff, that it was the custom to supply retail dealers with the labels in question for their convenience in the sale of the plaintiff's own manufacture. This was a material ingredient in considering the equities in the present case. And although the court would

restrain the sale of a spurious article with the label in question, to restrain its sale might stop its legitimate use for the plaintiff's own manufacture. The bill must therefore be retained, with liberty to the plaintiff to bring an action, and to apply.

### Lords Justices.

*Manby v. Devicks and another. July 14, 1856.*

PRODUCTION OF DOCUMENTS—EXAMINATION OF DEEDS BY DEFENDANTS, NOT THEIR SOLICITORS.

Held, that in order to entitle documents, admitted by the defendants in their answer to be in their possession, from production, it is necessary that the defendants themselves should from their own examination state that such documents do not relate to the plaintiff's title. It is insufficient that their solicitors have examined the documents. But time was given for the defendants to examine, and to make an affidavit against the production.

THIS was an appeal from an order of the Vice-Chancellor Wood directing the production of certain documents admitted by the defendants in their answer to be in their possession, but claiming non-production on the ground that to the best of their information and belief such documents did not support the plaintiff's case. It appeared that the defendants were ignorant of legal proceedings and had derived their information as to the contents of the documents from their solicitors, who offered to swear to the result of their examination.

*Cairns and Toller* in support.

The Lords Justices (without calling on *Roxburgh* and *C. Locock Webb* for the plaintiff contra) said that the examination by the solicitors was insufficient, but gave time to the defendants for that purpose and to make an affidavit as to the result.

# **Vice-Chancellor Wood.**

*African Steam Ship Company v. Swaney and Another.*  
June 30, 1886.

## **MERCHANT SHIPPING ACT—SHIPOWNERS' LIABILITY ON LOSS OF SHIP—COSTS OF ACTIONS AT LAW.**

*Held, that shipowners are liable under the 17 & 18 Vict. c. 104, to the costs of actions brought against them at law to recover damages by reason of the loss of their ship, where they avail themselves of the benefits of the act as to the restriction of their liability to the value of the ship.*

THIS was a suit under the 17 & 18 Vict. c. 104, to ascertain the value of the ship *Forerunner*, which had been wrecked off the coast of Africa, and to distribute the amount among the parties entitled to claim for losses thereby occasioned. It appeared that the defendant was owner of a portion of the cargo, and had brought an action to recover its value, as also had one of the passengers (another defendant) for his property lost with the ship. The value (£5,900) had been ascertained and paid into Court.

Section 504 of the Merchant Shipping Act enacts that: "No owner of any sea-going ship or share therein shall, in cases where all or any of the following events occur without his actual fault or privity (that is to say): 1. Where any loss of life or personal injury is caused to any person being carried in such ship. 2. Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship. 3. Where any loss of life or personal injury is by reason of the improper navigation of such sea-going ship as aforesaid caused to any person carried in any other ship or boat. 4. Where any loss or damage is by reason of any such improper navigation of such sea-going ship as aforesaid caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever, on board any other ship or boat:—be answerable in damages to an extent beyond the value of his ship and the freight due or to grow due in respect of such ship during the voyage which at the time of the happening of any such events as aforesaid is in prosecution or con-

tracted for, subject to the following proviso (that is to say), that in no case where any such liability as aforesaid is incurred in respect of loss of life or personal injury to any passenger, shall the value of any such ship and the freight thereof be taken to be less than fifteen pounds per registered ton."

And section 514 that: "In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal injury, or loss of or damage to ships, boats, or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right herein before given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it shall be lawful in England or Ireland for the High Court of Chancery, and in Scotland for the Court of Session, and in any British possession for any competent court, to entertain proceedings at the suit of any owner for the purpose of determining the amount of such liability subject as aforesaid, and for the distribution of such amount rateably amongst the several claimants, with power for any such court to stop all actions and suits pending in any other court in relation to the same subject-matter: and any proceeding entertained by such Court of Chancery or court of session, or other competent court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the court thinks just."

*Rolt and Cairns* for the plaintiff; *W. M. James, Cole, and G. M. Gifford* for the defendants.

The Vice-Chancellor said, the 514th section showed that the act was passed as a benefit to the shipowner, and any claimant might otherwise proceed at law without expense. The plaintiffs having taken advantage of the act were therefore bound to pay the defendants' costs of the two actions. There would, however, be no interest, as it was not authorized by the act, and the order for payment of the money into Court was in the nature of security, and did not operate as a judgment.

## **ANALYTICAL DIGEST OF CASES.**

SELECTED AND CLASSIFIED.

### **Appeals in Bankruptcy.**

#### **ACCOMMODATION BILL.**

*See Principal and Surety.*

#### **APPEAL.**

*See Sale by tender.*

#### **APPEAL.**

*Leave to appeal to House of Lords.—Held, that where a question is not one of difficulty or importance the Court will not give leave to appeal from its decision to the House of Lords.—Ex parte Bateman, in re Burbury, 5 De G. M'N. and G. 358.*

*And see Sale.*

#### **ARRANGEMENT DEED.**

*Deed of inspectorship.—Certificate of execution by majority of creditors.—A deed of inspectorship, containing a covenant by a debtor for payment of his debts in full by instalments, and a covenant on the part of the creditors executing the deed not to sue in*

the meantime, but not providing, except in certain events, for the assignment of all the debtor's estate: *Held*, not to be a deed of arrangement within the provisions of the Bankrupt Law Consolidation Act respecting arrangements by deed.

Before certifying that a deed has been executed by the majority required by those provisions, the Commissioner ought to be satisfied that the deed is one within the scope of them.—*Ex parte Wilkes, in re Wilkes, 5 De G., M'N. and G. 418,*

#### **AWARD AFTER BANKRUPTCY.**

*See Proof.*

#### **BALANCE-SHEET.**

*Preparation of.—Official Assignee.—The 160th section of the Bankrupt Law Consolidation Act, which empowers the Commissioner to make an allowance out of the estate to such person as he shall think fit for the preparation of the balance-sheet and accounts of the bankrupt, does not authorize an*

allowance to the official assignee, such an employment being inconsistent with his duties.—*Exparte Russell, in re Minnitt*, 5 De G. M'N. and G. 878.

#### BENEFIT BUILDING SOCIETY.

*Not entitled to priority on bankruptcy of treasurer.*—A benefit building society is not entitled on the bankruptcy of its treasurer, to priority over the other creditors.—*Exparte Bailey, in re Barrell*, 5 De G. M'N. and G. 880.

See *Sale*.

#### COMMISSIONER.

#### IMPRISONMENT.

*Effect of, until discharge by Insolvent Court, on creditor's right to petition for adjudication.*—Where the petitioning creditor had, before petitioning for adjudication, arrested the bankrupt for the petitioning creditor's debt, and detained him in custody till he was discharged on his petition to the Insolvent Debtors' Court, the Court of Appeal refused to annul the adjudication on that ground until its validity had been tried at law.—*Exparte Watson, in re Watson*, 5 De G. M'N. and G. 896.

#### INSPECTORSHIP-DEED.

See *Arrangement-deed*.

#### MORTGAGE.

*Of all property more than a year before bankruptcy.*—Where an assignment of all a bankrupt's property required for his trade, as a security for an antecedent debt, has taken place more than twelve months before the petition for adjudication, *semble*, that it is material for the assignees to show for the purpose of avoiding the deed, that there still exists a debt which existed at the time of the execution of the assignment.—*Exparte Taylor, in re Taylor*, 5 De G. M'N. and G. 892.

Case cited in the judgment: *Exparte Bailey*, 3 De G. M'N. and G. 834.

2. *Reputed ownership—Trade fixtures.*—A. B., a publican, being indebted to C. D., deposited with him the lease of a public-house and other houses, accompanied by a memorandum expressly constituting C. D. equitable mortgagee of the leasehold premises, and of the fixtures to the premises belonging: A. B. remained in possession of the premises and became bankrupt: *Held*, reversing the decision of the Commissioner in Bankruptcy, that the fixtures, consisting of ordinary house fixtures and trade fixtures, were not in the order and disposition of the bankrupt within the 125th section of the Bankrupt Law Consolidation Act, 1849, but belonged to the mortgagee.

By the word "fixtures" the Court understood such things as are ordinarily affixed to the freehold for the convenience of the occupier, and which might be removed without material injury to the freehold and the removal of which by a tenant would not give a ground of action to the landlord. The authorities on the subject reviewed. *Exparte Barclay, in re Gosson*, 5 De G. M'N. and G. 408.

Cases cited in the judgment: *Joy v. Campbell*, 1 Sch. and Lef. 336; *Whitfield v. Brand*, 16 M. and W. 289; *Mace v. Cadell, Cooper*, 323; *Colegrave v. Dias Santos*, 2 B. and C. 76; *Horn v. Baker*, 9 East, 215; *Clark v. Crownshaw*, 3 B. and Ad. 804; *Coombs v. Beaumont*, 5 B. and Ad. 72; *Boydell v. M'Michael*, 1 C. M. and R. 177; *Rufford v. Bishop*, 5 Russ. 346; *Hubbard v. Bagshawe*, 4 Sim. 326; *Trappes v. Harter*, 3 Crompt and M. 153; *Load v. Green*, 15 M. and W. 216.

#### NOTICE.

See *Principal and Surety*.

#### OFFICIAL ASSIGNEE.

See *Balance-sheet*.

#### PETITION FOR ADJUDICATION.

See *Imprisonment*.

#### PRINCIPAL AND SURETY.

*Accommodation bill—Notice.*—An indorsee for value of an accommodation bill, without notice that it is one of that description, may, notwithstanding notice subsequently acquired, release the drawee without releasing the acceptor. *Exparte Graham, in re Black*, 5 De Gex, M'N. and Gor. 856.

Case cited in the judgment: *Exparte Glendinning, Buck*, 617.

#### PRIORITY.

See *Benefit Building Society*.

#### PROOF.

*Award after bankruptcy.*—In an action to recover the balance upon an account current, a verdict for the plaintiff was taken by consent, subject to a reference to an arbitrator, who was empowered to direct that a verdict should be entered for the plaintiff or defendant, and the costs were to abide the result of the award. After the award, which was in favour of the plaintiff, and before judgment, the defendant committed an act of bankruptcy, of which notice was given to the plaintiff in the action, but judgment was nevertheless entered up upon the award. On the defendant being adjudicated a bankrupt, *Held*, that the amount for which judgment was entered up, with interest and costs, constituted a proveable debt. *Exparte Harding, in re Pickering*, 5 De Gex, M'N. and Gor. 867.

Case cited in the judgment: *Exparte Batteril*, 1 Ross, 192.

#### REPUTED OWNERSHIP.

See *Mortgage*.

#### SALE.

*Of bankrupt's property in discretion of Commissioner—Appeal.*—The sale of the bankrupt's estate is a matter peculiarly within the discretion of the commissioner, with which the Court of Appeal will not interfere upon a mere doubt. *Semble*, that the limitation of the time for appealing is not confined to decisions on adverse claims, but extends to administrative orders or directions. *Exparte Ford, in re Flood*, 5 De Gex, M'N. and Gor. 898.

#### SALE BY TENDER.

*Taxation of accountant's charge for.*—The scale of charges of an agent, employed by the assignees to sell the bankrupt's stock by tender, is properly settled by the rule adopted by the Court of Bankruptcy in London at an intermediate rate between that applicable to a sale by auction and that applicable to a sale by valuation.

It is not incumbent on the appellate court to decide such a question, although both parties submit to its jurisdiction.—*Exparte Hunt, in re M'Kenna*, 5 De G. M'N. and G. 887.

#### TAXATION.

See *Sale by tender*.

#### TENDER.

See *Sale by tender*.

#### TRADE FIXTURES.

See *Mortgage*.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, SEPTEMBER 20, 1856.

### ANALYSIS OF THE NEW COUNTY COURT ACT.

This statute will come into full operation on the 1st October, and we therefore proceed to call attention to its several provisions, taking the liberty to classify the enactments in somewhat a different method from that adopted by the learned draftsman of the act. The respective heads under which we propose to consider the effect of the various alterations are—1st. The Judges and Officers, their Salaries and Compensations. 2nd. The Jurisdiction of the Courts in Actions. 3rd. The Practice of the Courts. 4th. The Jurisdiction of the Superior Courts by Certiorari, Prohibition, and Mandamus. 5th. Replevin and Arrear of Rent. 6th. Proceedings to recover small Tenements. 7th. Fees and Costs. 8th. Miscellaneous Provisions.

#### JUDGES AND OFFICERS, THEIR SALARIES AND COMPENSATIONS.

A *deputy judge*\* of a county court must be a barrister-at-law of seven years' standing, or have practised as a barrister or special pleader for seven years, or be a judge of a county court† (s. 6).

The clerk of a county court is hereafter to be called the "*registrar*" of the court, and no person shall be appointed registrar of more than one court (s. 8). And after 1st October, 1856, a registrar of more than one court shall cease to be registrar except of the court of which he may elect to remain registrar; but this provision does not apply to any registrar who was clerk to any court mentioned in schedule A. or B. to the 9 & 10 Vic. c. 95, unless such registrar shall signify his desire that it should apply to him (s. 9).‡

The *registrar's compensation*, on ceasing to act for one or more county courts, is provided under the 10th section—namely, by an annuity equal to one-fourth of the average amount of fees received during the last five years. And if the registrar has been the clerk of any court mentioned in schedules A. or B. of the 9 & 10 Vic. c. 95, his compensation will be in accordance with the 38th section of that act.§

\* The Qualification of the judge is not altered by the act.

† Under this provision an attorney who has been appointed a county court judge (of which we believe there has been one instance only), might act as a deputy.

‡ There are sixty-one courts in Schedule A, and forty-five in Schedule B. The courts are the old courts of requests and small debts courts established under local acts of Parliament.

§ The compensation under a 38 is to be awarded by the Commissioners of the Treasury within six months after the alteration of court, who inquire into the nature of tenure and amount of fees, and award such gross or yearly sum and for such time as they may think just, upon consideration of the special circumstances of each case,—to be paid out of Consolidated Fund.

The appointment of a *deputy judge* will not be vacated by the death of a judge, and the acts of such deputy will be valid until a successor be appointed; and the deputy, after the death of the judge, is to receive as remuneration for the period he may act as deputy such sum as the Lord-Chancellor may direct (s. 11).

So the appointment of a *deputy registrar* shall not be vacated by the death or removal of the registrar, and he may continue to act until a successor be appointed, and receive for his services a rateable proportion of salary (ss 12, 18).

Provision is also made for the validity of the acts of the *bailliffs*, notwithstanding the death or removal of the high bailliff (s. 14).

On the death or removal of a high bailliff, the judge may appoint a person to execute the duties for three months (s. 16).

The salaries of the judges of the county courts shall be paid out of the Consolidated Fund, and the sums which are now or may hereafter be allowed to them for travelling expenses shall be paid out of monies that may be voted by Parliament for that purpose (s. 80).

By the 15 & 16 Vic. c. 54, s. 14, it was provided that the greatest salaries to be received in any case by the judges of the county courts should be £1,500, but that in no case should any judge be paid a less salary than £1,200. The commissioners of her Majesty's Treasury ordered that the salaries of the judges should be fixed at the amounts set opposite their names in schedule D.\* But by the present act (s. 81), every judge of a county court shall be paid a salary of £1,200 a year, and no more: provided that the judges mentioned in the schedule shall continue to receive the salaries therein mentioned.

The *registrars* are also, by s. 82, to be paid by salaries; and the principle on which the salaries are to be so regulated shall be, that the registrar of each court in which the plaints entered do not exceed the number of 200 in a year shall have an annual salary of £120, and that in courts where the plaints exceed 200 in the year the salaries shall be increased by sums of £5 for every 25 additional plaints up to 1,000 plaints inclusive, and then by sums of £4 for every 25 additional plaints up to 6,000 inclusive; and such salaries shall be inclusive of all salaries to the clerks employed by the registrar in the business of their respective courts, and of all emoluments whatsoever except those receivable by them in proceedings in insolvency or protection. In the courts in which the plaints exceed 6,000 the amount of salary shall be fixed by the Commissioners of the Treasury with the consent of the Lord Chancellor, not exceeding £700 a year, with a proviso in

\* See p. 300, ante.



favor of clerks acting in county courts before the 9 & 10 Vic. c. 95.

The *high bailiffs* are also to be paid by salaries to be fixed and regulated from time to time by the Commissioners of Her Majesty's Treasury, with the consent of the Lord Chancellor, and, in addition, to receive for their own use the fees appointed for keeping possession of goods under executions, and such salaries shall include all payments made by the high bailiffs to their under bailiffs, or, with the like consent, the high bailiffs may be paid partly by salaries and partly by allowances for the execution of warrants, and for mileage on the service or execution of any process (s. 83).

The salaries of the registrars and high bailiffs are to be paid out of the produce of the fees payable under the provisions of this act; and whenever the amount of such fees shall not be sufficient to pay such salaries the deficiency shall be made good out of any moneys to be provided by Parliament for that purpose (s. 84).

## II. JURISDICTION OF THE COUNTY COURTS IN ACTIONS.

*Bills of Exchange and Promissory Notes.*—The 18 & 19 Vic. c. 67, which gave a summary remedy on dishonoured bills of exchange and promissory notes was not limited to the sum of £20, and consequently proceedings might have been taken in the superior courts, and costs recovered, notwithstanding the previous enactments in the several county court acts; but now, by the fourth section of the present statute, those enactments apply to any debt not exceeding £20, although the same be secured or claimed upon a bill of exchange or promissory note.

*As to defendants residing out of the jurisdiction.*—The registrar may issue a summons against any defendant residing out of the jurisdiction of the court, upon the application of any plaintiff who will depose that his cause of action has arisen within the jurisdiction of such court (s. 15).

Under this provision the difficulty may probably be removed which was suggested as to the 80th section, which provides that no costs shall be allowed on a judgment by default in the superior court not exceeding £20. It was supposed that great hardship would be inflicted if plaintiffs were compelled to resort to the county court of the defendant's district. Wholesale dealers supplying goods to retail tradesmen in various parts of the country would have greatly suffered if obliged to appear with their witnesses in several distant county courts; but the goods being ordered and sent from the plaintiff's place of business, he will be able to depose that the cause of action arose within the district of the court in which he resides.

The 17th section provides that a summons may be served, or a warrant executed, within 500 yards of the boundary of the district, or by order of the judge within the district of any other county court.

Where a plaintiff shall dwell or carry on his business in any of the districts of the courts of the metropolis, the summons may issue and be served either in the district of the plaintiff or of the defendant (s. 18).

*Change of venue.*—If a judge of a county court

shall be satisfied by either party to a cause that such cause can be more conveniently or fairly tried in some other county court, he shall order that the venue be changed, and that the cause be sent for hearing to such other county court, or, if the judge shall be interested in the matter of any cause pending in his court, he shall order that the venue be changed, and that the cause be sent for hearing to some convenient county court of which he is not the judge; and the registrar shall transmit by post to the registrar of the court to which the cause is to be sent a certified copy of the plaint (s. 22).

Where in any action of contract in a superior court the claim does not exceed £50, or where such claim, though it originally exceeded £50, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding £50, a judge of a superior court, on the application of either party, after issue joined, may, in his discretion, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name, and thereupon the plaintiff shall lodge with the registrar of such court such order and the issue; and after hearing, the registrar shall certify the result to the master's office of such superior court, and judgment in accordance with such certificate may be signed in such superior court (s. 26).

*Set-off.*—Where in an action the debt or demand claimed consists of a balance not exceeding £50, after an admitted set-off, claimed or recoverable by the defendant from the plaintiff, the court has jurisdiction to try the action (s. 24).

*Trials by consent.*—All actions (except for criminal), if both parties agree, by a memorandum signed by them or their attorneys, may be tried in any county court (s. 23).

So in an action in which the title to any corporeal or incorporeal hereditament, or any toll, fair, market, or franchise shall incidentally come in question, the judge shall have power to decide the claim which it is the immediate object of the act to enforce, if both parties consent in writing; but the judgment shall not be evidence of title in any other action, nor affect the right of appeal (s. 25).

*Limitation of the jurisdiction.*—The county courts shall not have jurisdiction to try any action for criminal conversation (s. 28).

No action shall be brought in a county court on any judgment of a superior court (s. 27).

*Actions by or against judges or officers.*—A judge proposing to sue any person dwelling or carrying on business in any district of which he is the judge may bring his action in the county court of any adjoining district of which he is not the judge; and any person proposing to sue a judge may bring his action in any county court of a district adjoining the district of which the defendant is judge (s. 19).

If an action be brought by an officer in the court of which he is an officer, except in case of the registrar suing as official assignee, the judge shall, at the request of the defendant, order that the venue be changed, and that the cause be sent for hearing to the court of some convenient district of which he is not the judge; and the registrar shall forthwith transmit by post a certified copy of the plaint (s. 20).

If an action be brought against an officer of a county court, the summons may issue in the district of which he is an officer, or in any adjoining district the judge of which is not the judge of a court of which the defendant is an officer (s. 21).

## III. PRACTICE OF THE COURTS.

*Notice of defence.*—In any action in a county court for a debt or liquidated money demand exceeding £20, the plaintiff may, at his option, cause to be issued either a summons in the ordinary form, or a summons in the form given in schedule (B.); provided that such summons be personally served on the defendant twelve clear days before the return day, and then if the defendant shall not at least six clear days before such return day give notice in writing, signed by himself, his attorney or agent, to the registrar, of his intention to defend, the plaintiff may, on or within one month after such return day, without giving any proof of his claim, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the registrar; and the order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments, if any, as the plaintiff or his attorney or agent shall in writing have consented to take at the time of the entry of the plaint (s. 28).

If the defendant shall give such notice, the action shall be heard in the ordinary course; but in any event the registrar shall, immediately after the last day for giving such notice, send a letter to the plaintiff by post, stating whether the defendant has or has not been served with such summons, and whether he has or has not given notice of his intention to defend (s. 29).

These are important improvements in cases above £20. It is submitted that the practice, or something to the like effect, should have been extended to all cases, however small, in order to prevent the unnecessary attendance of the plaintiff and his witnesses. In the superior courts, final judgment is obtained by default if the defendant does not appear and plead.

*Amendments.*—The judge may at all times amend defects and errors in any proceeding, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made if duly applied for (s. 57).

*Payment of debt by instalments.*—Where judgment has been obtained in a county court for a sum not exceeding £20, exclusive of costs, the judge may order such sum and the costs to be paid at such time or times, and by such instalments, if any, as he shall think fit, and all such monies shall be paid into court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith, or within fourteen clear days from the date of the judgment, unless the plaintiff or his counsel, attorney, or agent, will consent that the same shall be paid by instalments, in which case the judge shall order the same to be paid at such time or times, and by such instalments, if any, as shall be consented to, and all such monies, whether payable in one sum or by instalments, shall be paid into court (s. 45).

*Attendance of witnesses.*—The judge upon application on affidavit by either party, may issue an order for bringing up any prisoner confined in any gaol under any sentence or under commitment for trial or otherwise except under process in any civil action, suit, or proceeding, to be

examined as a witness in any cause or matter depending, or to be inquired of or determined in or before such court: provided that the person having the custody of such prisoner shall not be bound to obey such order, unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer, and of the prisoner in going to, remaining at, and returning from such county court (s. 81).

*The bankruptcy or insolvency of plaintiff,* in any action in a county court, which the assignees might maintain for the benefit of the creditors, shall not cause the action to abate if the assignees shall elect to continue such action, and to give security for the costs thereof, within such reasonable time as the judge shall order, but the hearing of the cause may be adjourned until such election is made; and in case the assignees do not elect to continue the action, and to give such security within the time limited by the order, the defendant may avail himself of the bankruptcy or insolvency as a defence to the action (s. 62).

*Priority of executions.*—The precise time when any application shall be made to a registrar to issue a warrant against the goods of a party shall be entered by him in the execution book and on the warrant; and when more than one such warrant shall be delivered to the high bailiff to be executed he shall execute them in the order of the times so entered (s. 46).

When a writ against the goods of a party has issued from a superior court, and a warrant against the goods of the same party has issued from a county court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application to the registrar for the issue of the warrant to be executed; and the sheriff, on demand, shall, by writing signed by any clerk in the office of the under sheriff, inform the high bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall show his warrant to any sheriff's officer, and such writing purporting to be so signed and the endorsement on the warrant, shall respectively be sufficient justification to any high bailiff or sheriff acting thereon (s. 47).

*Commitment.*—Every warrant of commitment which shall issue from a county court shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no longer, but no order for commitment shall be drawn up or served (s. 59).

No officer of a county court in executing any warrant and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs, unless the damages awarded shall exceed 40s. (s. 60.)

Any judgment summonses issued out of a county court under 9 & 10 Vict. c. 95. s. 98, or under this act, or any warrant of commitment in respect of an unsatisfied judgment or order of a county court, may be in the form in Schedule (B.) to this act; and all such summonses or warrants shall be deemed suffi-

cient to justify proceeding under them without any further statement of facts to show jurisdiction (s. 61).

*Appeal.*—No appeal shall lie from the decision of a county court, if before such decision is pronounced both parties shall agree, in writing, signed by themselves or their attorneys or agents, that the decision of the judge shall be final, and no such agreement shall require a stamp (s. 69).

*Enforcing judgments out of jurisdiction.*—A judgment summons authorised by the 9 & 10 Vict. c. 95, s. 98, may, by leave of the judge, be obtained from the court in which judgment was obtained, although the judgment debtor shall not then dwell or carry on business within the district of such court, if the judge shall think fit to grant such leave (s. 48).

If a judge of a superior court shall be satisfied that a party against whom judgment for an amount exceeding £20, exclusive of costs, has been obtained in a county court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may, if he shall think fit, and on such terms as to costs as he may direct, order a writ of *certiorari* to issue to remove the judgment of the county court into one of the superior courts, and when removed it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of such superior court; but no action shall be brought upon such judgment (s. 49).

*Rules and orders of practice.*—The Lord Chancellor may appoint five county court judges to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same (s. 82).

#### IV. JURISDICTION OF THE SUPERIOR COURTS BY CERTIORARI, PROHIBITION, AND MANDAMUS.

Any action commenced in a county court for a claim not exceeding £5 may be removed by writ of *certiorari* into a superior court, if such superior court or a judge of a superior court shall deem it desirable that the cause shall be tried in such superior court.

And if the party applying for such writ shall give security, to be approved by one of the masters of such superior court, for the amount of the claim, and the costs of the trial, not exceeding in all £100, and shall further assent to such terms, if any, as the superior court or judge shall think fit to impose (s. 88).

If in any action of contract the plaintiff shall claim a sum exceeding £20, or if in any action of tort the plaintiff shall claim a sum exceeding £5, and the defendant shall give notice that he objects to the action being tried in the county court, and shall give security, to be approved of by the registrar, for the amount claimed, and the costs of trial in one of the superior courts of common law, not exceeding in the whole the sum of £150, all proceedings in the county court in any such action shall be stayed; and the entry of the plaint in such action shall be a sufficient commencement of the suit to prevent the operation of any statute of limitation applicable to such claim: provided that nothing herein contained shall prevent the removal of any cause from a county court by writ of *certiorari* in the cases and subject to the

conditions in and subject to which such cause may now be removed (s. 89).\*

The granting by any of the superior courts or by any judge thereof of a rule or summons to show cause why a writ of *certiorari* or *prohibition* should not issue to a county court, shall, if the superior court or a judge thereof so direct, operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons; or until such superior court or judge shall otherwise order; and the judge of the county court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such order be made; but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the registrar of the county court two clear days before the day fixed for the hearing of the cause, the judge of the county court may, in his discretion, order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs (s. 40).

Where a writ of *certiorari* or of *prohibition* addressed to the judge of a county court shall have been granted by a superior court, or a judge thereof, on an *ex parte* application, and the party who obtained it shall not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for hearing the cause to which it shall relate, the judge of the county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs (s. 41).

When an application shall be made to a superior court or a judge thereof for a writ of *prohibition* to be addressed to a judge of a county court, the matter shall finally be disposed of by the rule or order, and no declaration or further proceedings in *prohibition* shall be allowed (s. 42).

No writ of *mandamus* shall henceforth issue to a judge or an officer of the county court for refusing to do any act relating to the duties of his office.

But any party requiring such act to be done may apply to any superior court or a judge thereof, upon an affidavit of the facts, for a rule or summons calling upon such judge or officer of a county court, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such rule or summons good cause shall not be shown, the superior court or judge thereof may by rule or order direct the act to be done, and the judge or officer of the county court, upon being served with such rule or order, shall obey the same on pain of attachment; and in any event the superior court or the judge thereof may make such order with respect to costs as to such court or judge shall seem fit (s. 43).

When any superior court or a judge thereof shall

\* *Certiorari* to remove into superior courts claims in the county court under the 9 & 10 Vict. c. 95, s. 90, may issue where the debt or damage claimed shall exceed £5, by leave of a judge of one of the superior courts upon such terms as to payment of costs, giving security for debt or costs or such other terms as he shall think fit. The usual ground is that difficult questions of law will arise. And also in (s. 121) any action of replevin, in which the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, shall be in question, or where the rent is more than £20.

have refused to grant a writ of *certiorari* or of prohibition to be addressed to a judge, or such rule or order as in the last preceding section is specified, no other superior court or judge thereof shall grant such writ or rule or order; but nothing herein shall affect the right of appealing from the decision of the judge of the superior court to the court itself, or prevent a second application being made for such writ, or rule, or order to the same superior court or a judge thereof on grounds different from those on which the first application was founded (s. 44).

#### V. REPLEVIN AND ARREAR OF RENT.

The powers and responsibilities of the sheriff with respect to replevin bonds and replevins are henceforth to cease.

And the registrar of the county court of the district in which any distress subject to replevin shall be taken shall be empowered, subject to the regulations hereinafter contained, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, and such process shall be executed by the high bailiff (s. 63).

Such registrar shall, at the instance of the party whose goods shall have been distrained, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the next two succeeding sections (s. 64).

An action of replevin may be commenced in any superior court in the form applicable to personal actions therein, and such court shall have power to hear and determine the same.

And if the replevisor shall wish to commence proceedings in any superior court, he shall, at the time of replevying, give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in a superior court, conditioned to commence an action of replevin against the distrainer in such superior court as shall be named in the security, within one week from the date thereof, and to prosecute such action with effect and without delay, and unless judgment thereon be obtained by default, to prove before such superior court that he had good ground for believing either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise was in question, or that such rent or damage exceeded £20, and to make return of the goods, if a return thereof shall be adjudged (s. 65).

If the replevisor shall wish to commence proceedings in a county court, he shall at the time of replevying give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in the county court, conditioned to commence an action of replevin against the distrainer in the county court of the district in which the distress shall have been taken, within one month from the date of the security, and to prosecute such action with effect and without delay, and to make a return of the goods, if a return thereof shall be adjudged (s. 66).

Any action of replevin brought in a county court shall be removed into any superior court by writ of *certiorari*, if the defendant shall apply to such superior court or to a judge there for such writ, and shall give security,

To be approved of by the master of such superior court, for such amount, not exceeding £150, as such master shall think fit, conditioned to defend such action with effect, and, unless the replevisor shall discontinue or shall not prosecute such action, or become nonsuit therein, to prove before such superior court that the defendant had good ground for believing, either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise was in question, or that the rent or damage in respect of which the distress shall have been taken exceeded £20; and every such superior court shall have power to determine the same action (s. 67).

An appeal from the decision of a county court, on the same grounds and subject to the same conditions as are provided by the 13 & 14 Vict. c. 61, s. 14, shall be allowed in all actions of replevin where the amount of rent or damage exceeds £20, and in all actions for the recovery of tenements where the yearly rent or value of the premises exceeds £20, and in proceedings in *interpleader* where the money claimed or the value of the goods or chattels claimed, or of the proceeds thereof, exceeds £20, and in all actions where the parties agree that the court shall have jurisdiction (s. 68).

*Interpleader*.—Where any claim shall be made under the 9 & 10 Vict. c. 95, s. 118, to or in respect of any goods taken in execution under the process of a county court—

The claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisal in case of dispute, to be by such bailiff paid into court, to abide the decision of the judge upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, and in default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale, to abide the decision of the judge (s. 72).

*Arrear of rent*.—The 8 Anne, c. 14, s. 1, shall not apply to goods taken in execution under the warrant of a county court.

But the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy, shall in addition thereto distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken, unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale, next the claim of such landlord not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly the amount for which the warrant issued; and if any replevin be made

of the goods so taken, the bailiff shall, notwithstanding, give possession of such premises to the plaintiff, and the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant, and all persons claiming by, through, or under him, shall, so long as the order of the court remains unreversed, be barred from all relief in equity or otherwise (s. 75).

#### VI. RECOVERING POSSESSION OF SMALL TENEMENTS.

When the term and interest of the tenant of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof shall have exceeded £50 by the year, and upon which no fine or premium shall have been paid, shall have expired, or shall have been determined either by the landlord or the tenant by a legal notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a claim at his option, either against such tenant or against such person so neglecting or refusing, in the county court of the district in which the premises lie for the recovery of the same.

And thereupon a summons shall issue to such tenant or such person so neglecting or refusing; and if the defendant shall not, at the time named in the summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the claim be given by the defendant to the plaintiff, either forthwith or on or before such day as the judge shall think fit to name; and if such order be not obeyed, the registrar, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the high bailiff of the court to give possession of such premises to the plaintiff (s. 50).

*Rent and mesne profits.*—In any such claim against a tenant as in the last preceding section is specified the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the claim, so as the same shall not exceed £50, and any misdescription in the nature of such claim may be amended at the trial (s. 51).

When the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable thereof exceeds £50 by the year, shall for one half year be in arrear, and the landlord shall have right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a claim in the county court of the district in which the premises lie for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry; and if the tenant shall *five* clear days before the return day of such summons pay into court all the rent in arrear, and the costs, the said action shall cease, but if he shall not

make such payment, and shall not at the time named in the summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that one half year's rent was in arrear before the claim was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the claim be given by the defendant to the plaintiff on or before such day, not being less than *four weeks* from the day of hearing, as the judge shall think fit to name, unless within that period all the rent in arrear and the costs be paid into court: and if such order be not obeyed, and such rent and costs be not so paid, the registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff issue a warrant authorising and requiring the high bailiff of the court to give possession of such premises to the plaintiff (s. 52).

Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any *sub-tenant* of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he shall forthwith give notice thereof to his *immediate landlord* under penalty of *forfeiting three years' rackrent* of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the court from which summons shall have issued, and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question (s. 53).

A summons for the recovery of a tenement may be served like other summonses to appear to plaintiffs in county courts; and if the defendant cannot be found, and his place of dwelling shall either not be known or admission thereto cannot be obtained for service, any such summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant (s. 54).

Any warrant to a high bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made except between the hours of *nine* in the morning and *four* in the afternoon (s. 55).

Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the judge in his order for the delivery of possession of the premises in question, and shall continue in force for *three months* from such date and no longer, but no order for delivery of possession need be drawn up or served (s. 56).

#### VII. FEES AND COSTS.

The fees payable on the proceedings in the county courts mentioned in schedule C.\* to this act shall be those therein specified; and such fees shall, except in interpleaders, or where such fees shall be payable in respect of keeping possession, appraising, or sell-

\* See p. 299, ante.

ing goods seized, be paid in the first instance by the party on whose behalf any such proceeding is to be taken, before such proceeding is taken; and in default of the payment of any fees, payment thereof shall, by order of the judge, be enforced by such means as might be employed to recover any debt adjudged by the court to be paid; and a table of all fees shall be posted in some conspicuous place in every court house and in every registrar's office (s. 78).

The Commissioners of Her Majesty's Treasury, with the consent of the Lord Chancellor, may lessen or increase the fees which are specified in schedule C., or which are now payable on proceedings in the county courts, and may substitute other fees in lieu thereof, and may order new fees to be paid on any proceedings which are now or shall hereafter be authorised to be taken in such courts: provided that every such alteration in the scale of fees shall be notified to both Houses of Parliament within ten days from the commencement of the session next after such alteration (s. 79).

*Costs.*—Where an action of contract is brought in one of her Majesty's superior courts of record to recover a sum not exceeding £20, and the defendant in the action suffers judgment by default, the plaintiff shall recover no costs, unless upon an application to such court or to a judge of one of the superior courts, such court or judge shall otherwise direct (s. 30).

With respect to proceedings in the county courts, in actions where the debt or damage claimed exceeds £20, the five county court judges mentioned in the section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every county court (s. 33).

With respect to such proceedings as are specified in the last preceding section, all costs and charges between party and party shall be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge of the court, on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force (s. 34).

With respect to such proceedings as are last hereinbefore specified, all costs and charges between attorney and client shall, on the application either of the attorney or client, but not otherwise, be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge of the court, on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force, unless the registrar shall be satisfied that the client has agreed in writing to pay them, in which case they may be allowed; and no attorney shall have a right to recover from his client any costs or charges in respect of such proceedings, unless they shall have been allowed, either on such taxation, or on the taxation of a master of a superior court of common law or of the Court of Chancery (s. 35).

Where in any action the debt or damage claimed shall not exceed £20, an attorney shall not be en-

titled to recover from his client any further costs or charges in the conduct of such suit than those mentioned in the 9 & 10 Vict. c. 95, s. 91, unless upon taxation of costs the registrar be satisfied, by writing under the hand of the client, that he has agreed to pay further costs or charges; and in such case the registrar may allow any costs or charges not exceeding the amount which may have been so agreed to be paid (s. 36).

Until the scale of costs and charges, and the rules, orders, and forms mentioned herein, shall respectively be in force, the scale of costs and charges, and the rules, orders, and forms respectively in operation in the county courts at the time of passing this act, so far as the same are not inconsistent with this act, shall continue in force (s. 37).

*Security for costs.*—Where by this act, or any act relating to the county courts, a party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party or intended party in the action or proceeding: provided, that the court in which any action on the bond shall be brought may by rule or order give such relief to the obligors as may be just, and such rule or order shall have the effect of a defeasance of such bond (s. 70).

*Deposit in lieu of security.*—Where by this act or any acts relating to the county courts a party is required to give security, he may in lieu thereof deposit with the registrar, if the security is required to be given in a county court, or with a master of the superior court if the security is required to be given in such court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by such registrar or master, and to be signed by such party, his attorney or agent, setting forth the conditions on which such money is deposited, and the registrar or master shall give to the party paying a written acknowledgment of such payment; and the judge of the county court, when the money shall have been deposited in such court, or a judge of the superior court when the money shall have been deposited in a superior court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party or parties as to him shall seem just (s. 71).

#### VIII. MISCELLANEOUS PROVISIONS.

Any acknowledgment to be made by any married woman of any deed under the 8 & 4 Wm. 4, c. 74, may be received by a judge of a county court in the same manner as such acknowledgment may be received by a judge of a superior court (s. 73).

Any affidavit to be used in a county court may be sworn before a judge or registrar of a county court, without the payment of any fee, or before a commissioner to administer oaths in Chancery in England, or a London commissioner to administer oaths in Chancery, or a commissioner for taking affidavits in any superior court, such commissioners respectively not being registrars, or before a justice of the peace (s. 58).

The expense of building, purchasing, or providing any messuages and lands for the purposes of the county courts, and of repairing, furnishing, cleaning, lighting, and warming the court houses and offices, and of payment of the salaries of the necessary servants for taking charge of such court houses and offices, and of supplying the courts and offices with law and office books and stationery, and of postage

stamps, and the disbursements of the high bailiffs in conveying to prison persons committed by the county courts, and all other expenses incident to the holding of the courts, shall be paid by the Commissioners of Her Majesty's Treasury out of any moneys to be from time to time provided by Parliament for such purposes (s. 85).

**Prisons.**—When any prison wherein any person committed by a county court may be confined is situated at any inconvenient distance, one of her Majesty's principal secretaries of state may direct that persons committed by such court shall be confined in any other prison to which persons may be committed from any other county court, though such prison may be in a different county, district, &c.: provided that no such order shall be made without the consent of the visiting justices; and every person so confined shall be supported at the expense of the county, district, city, borough, or place in which he shall have resided at the time of his committal (s. 74).

If any bond given under the provisions of any act relating to the county courts shall have been registered in the Court of Common Pleas in England, and the condition of such bond shall have been satisfied, the Commissioners of her Majesty's Treasury, by certificate under the hands of any two of them, may authorise the proper officer of the said court to enter up satisfaction on the record of such bond or obligation (s. 76).

**Hundred court of Wirral abolished.**—No action or suit shall be commenced in the *Hundred or Wapentake Court of Wirral* in the county of *Chester*, and the authority and jurisdiction of the court shall cease, and all actions or suits depending in the court shall be transferred, with all the proceedings thereon, to the county court for the district in which the respective defendants shall then reside; and such actions and suits shall be dealt with and decided, as to the costs of the same, as well as in other respects, according to the practice of the county court or of the said hundred court according to the discretion of the judge of the county court, which court shall, for the purposes of such actions or suits, be deemed to have all the power and jurisdiction possessed by the said hundred court before the passing of this act; and every person who is legally entitled to any franchise or office in or in respect of the said hundred court shall be entitled to make claim for compensation to the Commissioners of Her Majesty's Treasury within six months after the passing of this act; and the said commissioners, in such manner as they shall think fit, may inquire what was the nature of the franchise, the amount of the compensation; and the several compensations hereinbefore granted shall be paid out of monies to be voted by Parliament (s. 77).

**Counties Palatine.**—All the provisions of this act applicable to superior courts and judges thereof shall apply to the Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*, and the judges thereof respectively, being judges of one of the common law courts at Westminster, and all the provisions applicable to masters of superior courts shall apply to the respective prothonotaries of the Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*, and their respective deputies, acting in the execution of the duties of such officers; provided that any writs of *certiorari* to be issued by the order of such courts or of a judge thereof shall be issued out of the Chanceries of the Counties Palatine of *Lancaster* and *Durham* respectively, and shall be made returnable into the Court of Common Pleas

at *Lancaster* and Court of Pleas at *Durham* in the same manner as other writs of *certiorari* of such counties palatine (s. 86).

Various enactments in former statutes are repealed by the 2nd section, for which see p. 268, *ante*. They relate to provisions amended by the present act.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ADMINISTRATION OF CRIMINAL JUSTICE AMENDMENT ACT.

19 & 20 Vict. c. 118.

18 & 19 Vict. c. 126; provision as to certain liberties and places not in Petty Sessional divisions; provision as to fees, &c., payable to certain persons herein named.

The following are the title, preamble, and section of the act:—

An Act to amend the Act of the last Session of Parliament for diminishing Expense and Delay in the Administration of Criminal Justice in certain cases. [July 29, 1856.]

WHEREAS it is expedient to amend the act of the last session of Parliament, chapter one hundred and twenty-six, as hereinafter mentioned: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. So much of section nine of the said act as provides that every petty sessions for the purposes of that act shall be the petty sessions holden for a petty sessional division shall not extend or be applicable to petty sessions holden in or for the liberties of the Cinque Ports or any part thereof, or to any other liberty or place not forming and not being within a petty sessional division; and all the duties which under the said act should be performed by the clerks of assize as clerks of the Crown shall in the counties palatine of *Lancaster* and *Durham* be performed by the clerks of the Crown of those counties palatine (who are not clerks of assize); and all fees and emoluments heretofore payable to them for the performance of their duties as clerks of the Crown shall be and they are hereby abolished; and all the powers given and provisions made by the twentieth section of the said act for the payment of clerks of assize by salary in lieu of fees, in respect of their duties as clerks of the Crown, shall be and the same are hereby extended and made applicable to the payment by salary in lieu of fees and emoluments of the clerks of the Crown in the counties palatine of *Lancaster* and *Durham*, as well as to the payment of the expenses of their respective offices.

### GRAND JURIES ACT.

19 & 20 Vict. c. 54.

1. Witnesses examined before grand juries to be sworn in the presence of the jurors.
2. Not necessary for witnesses to be sworn in open court.
3. Interpretation of terms.

The following are the title, preamble, and sections of the act:—

An Act to facilitate the Despatch of Business before Grand Juries in England and Wales.

[July 14, 1856.]

WHEREAS it would expedite and improve the administration of criminal justice if persons attending to give evidence before grand juries were sworn in the presence of the jurors who are to act upon such testimony: be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this act it shall be lawful for the foreman of every grand jury empanelled in England and Wales, and he is hereby authorised and required, to administer an oath to all persons whomsoever who shall appear before such grand jury to give evidence in support of any bill of indictment, and all such persons attending before any grand jury to give evidence may be sworn and examined upon oath by such grand jury touching the matters in question; and every person taking any oath or affirmation in support of any bill of indictment who shall wilfully swear or affirm falsely shall be deemed guilty of perjury; and the name of every witness examined or intended to be so examined shall be endorsed on such bill of indictment; and the foreman of such grand jury shall write his initials against the name of each witness so sworn and examined touching such bill of indictment: provided, however, that nothing in this act contained shall affect any fees by law payable to any officer of any court for swearing witnesses, but such fees shall remain payable as if this act had not passed.

2. From and after the passing of this act it shall not be necessary for any person to take an oath in open court in order to qualify such person to give evidence before any grand jury.

3. The word "foreman" shall include any member of such grand jury who may for the time being act on behalf of such foreman in the examination of witnesses in support of any bill of indictment; and the word "oath" shall include affirmation, where by law such affirmation is required or allowed to be taken in lieu of an oath.

## REGULATIONS OF JOINT STOCK COMPANIES.

19 & 20 Vict. c. 47.

### *As to Shares.*

1. No person shall be deemed to have accepted any share in the company unless he has testified his acceptance thereof by writing under his hand, in such form as the company from time to time directs.

2. The company may from time to time make such calls upon the shareholders in respect of all monies unpaid on their shares as they think fit, provided that twenty one days' notice at least is given of each call, and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the company.

3. A call shall be deemed to have been made at the time when the resolution authorising such call was passed.

4. If before or on the day appointed for payment any shareholder does not pay the amount of any call to which he is liable, then such shareholder

shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The company may, if they think fit, receive from any of the shareholders willing to advance the same all or any part of the monies due upon their respective shares beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the shareholder paying such sum in advance and the company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum, not exceeding one shilling, as the company may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed, on payment of such sum, not exceeding one shilling, as the company may prescribe.

9 a. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

### *As to Transmission of Shares.*

10. The executors or administrators of a deceased shareholder shall be the only persons recognised by the company as having any title to his share.

11. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any shareholder, or in consequence of the marriage of any female shareholder, or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the company.

12. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

13. The person so becoming entitled shall testify such election by executing to his nominee a deed of transfer of such share.

14. The deed of transfer shall be presented to the company accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the company shall register the transferee as a shareholder.

### *As to Forfeiture of Shares.*

15. If any shareholder fails to pay any call due on the appointed day, the company may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such nonpayment.

16. The notice shall name a further day, and a place or places, being a place or places at which calls of the company are usually made payable, on and at which such call is to be paid: it shall also



state that in the event of non-payment at the time and place appointed the shares in respect of which such call was made will be liable to be forfeited.

17. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

18. Any shares so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company thinks fit.

19. Any shareholder whose shares have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

#### *As to Increase in Capital.*

20. The company may, with the sanction of the company previously given in general meeting, increase its capital.

21. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

#### *As to General Meetings.*

22. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the company, and at such place, as the directors may determine.

23. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

24. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

25. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one fifth part of the shares of the company, convene an extraordinary general meeting.

26. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

27. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

28. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner, if any, as may be prescribed by the company.

29. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

30. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the company.

31. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the shareholders belonging to the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that no quorum shall in any case exceed forty.

32. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: In any other case it shall stand adjourned to the following day, at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned sine die.

33. The chairman (if any) of the board of directors shall preside as chairman at every meeting of the company.

34. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose one of their number to be chairman of such meeting.

35. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

36. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

37. If a poll is demanded in manner aforesaid the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

#### *As to Votes of Shareholders.*

38. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

39. If any shareholder is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator; and if any shareholder is a minor he may vote by his guardian, tutor, or curator, or any one of his guardians, tutors, or curators, if more than one.

40. If one or more persons are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

41. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an

intestate's estate, or by the custom of the City of London, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

42. Votes may be given either personally or by proxies: A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under their common seal.

43. No person shall be appointed a proxy who is not a shareholder, and the instrument or mandate appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument or mandate appointing a proxy shall be valid after the expiration of one month from the date of its execution.

*As to Directors.*

44. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

45. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this act be deemed to be directors.

*As to the Powers of Directors.*

46. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by this act or by the articles of association, if any, declared to be exercisable by the company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

*As to the Disqualification of Directors.*

47. The office of director shall be vacated,—

If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profits of any contract with the company;

If he participates in the profits of any work done for the company:

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a shareholder in any incorporated company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted, and he shall incur a penalty not exceeding twenty pounds.

*As to the Rotation of Directors.*

48. At the first ordinary meeting after the incorporation of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one third, shall retire from office.

49. The one third or other nearest number to retire during the first and second years ensuing the incorporation of the company shall unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or

other nearest number who have been longest in office shall retire.

50. A retiring director shall be re-eligible.

51. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

52. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

53. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

54. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

*As to the Proceedings of Directors.*

55. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes the chairman, in addition to his original vote, shall have a casting vote: a director may at any time summon a meeting of the directors.

56. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

57. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

58. A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

59. A committee may meet and adjourn as they think proper: questions at any meeting shall be determined by a majority of votes of the members present: and in case of an equal division of votes the chairman shall have a casting vote.

60. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

61. The directors shall cause minutes to be made in books provided for the purpose,—

(1). Of all appointments of officers made by the directors.

- (2). Of the names of the directors present at each meeting of directors and committees of directors.
- (3). Of all orders made by the directors and committees of directors; and,
- (4). Of all resolutions and proceedings of meetings of the company, and of the directors and committees of directors.

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

62. The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

#### *As to Dividends.*

63. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

64. No dividend shall be payable except out of the profits arising from the business of the company.

65. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing, or maintaining, the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the company, may select.

66. The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode, and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

68. No dividend shall bear interest as against the company.

#### *As to the Accounts.*

69. The directors shall cause true accounts to be kept,—

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and,

Of the credits and liabilities of the company:

Such accounts shall be kept, upon the principle of double entry, in a cash book, journal, and ledger: The books of account shall be kept at the principal office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the shareholders during the hours of business.

70. Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

71. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters: Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

72. A balance sheet shall be made out in every year, and laid before the general meeting of the company, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

73. A printed copy of such balance sheet shall seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

#### *As to the Audit.*

74. The accounts of the company shall be examined and the correctness of the balance sheet ascertained by one or more auditor or auditors to be elected by the company in general meeting.

75. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

76. The auditors need not be shareholders in the company; No person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

77. The election of auditors shall be made by the company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

78. The remuneration of the auditors shall be fixed by the company at the time of their election.

79. Any auditor shall be re-eligible on his quitting office.

80. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

81. If no election of auditors is made in manner aforesaid, the board of trade may, on the application of one fifth in number of the shareholders of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

82. Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

83. Every auditor shall have a list delivered to him of all books kept by the company, and he shall at all reasonable times have access to the books and accounts of the company: He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

84. The auditors shall make a report to the shareholders upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

#### As to Notices.

85. Notices requiring to be served by the company upon the shareholders may be served either personally, or by leaving the same or sending them through the post in a letter addressed to the shareholder at their registered places of abode.

86. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

87. All notices required by this act to be given by advertisement shall be advertised in a newspaper circulating in the district in which the registered office of the company is situate.

### LAW OF VENDOR AND PURCHASER.

#### LIEN ON ESTATE FOR ANNUITY "TO BE SECURED BY BOND."

By an agreement between Mrs. Finucane and Mr. Dunbar the latter agreed to discharge an unsatisfied claim of £500 on the former, upon having an assignment of all her right and interest in a real estate conveyed to him, and upon such assignment he agreed to pay her £25, and to grant an annuity of £50 per annum during the several lives of three persons mentioned, to be secured by bond. The annuity was greatly in arrear, and the party in whom it had become vested claimed to have a lien on the estate, and to have it secured by a charge on the property.

The Master of the Rolls said—

"There is a great number of decisions relating to this question of the lien upon the estate for unpaid purchase-money, and there certainly is a great discordance in the authorities; but I think it unnecessary to refer to them in detail. There are three decisions of a later date, which have been confidently referred to as relating more particularly to this subject, but they do not appear to me to be inconsistent with each other or with the opinion I have to express on this subject. The cases are *Winter v. Lord Anson*, 3 Russ. 488; *Clarke v. Royle*, 8 Sim. 499; and *Buckland v. Pocknell*, 18 Sim. 406; and I think they are all reconcilable. The effect of them is this: that it all depends upon the terms of the contract entered into between the parties, whether a lien does or does not exist upon the land in respect of the unpaid purchase-money. The case of *Buckland v. Pocknell* appears to me to be very near the present. There, an equity of redemption was sold, in consideration of two annuities which were granted and

covenanted to be paid, by a deed of even date with the conveyance. The conveyance was expressed to be made in consideration of the annuity so granted, and of the mortgage debt having been paid by the purchaser. It was held, that there was no lien.

It appears to me that the mode of carrying the contract in the present case into effect is this,—by a separate and independent instrument the vendor should convey the land, and in consideration of that conveyance the purchaser should secure the annuity by his bond. In the case of *Buckland v. Pocknell* exactly the same thing had been done. The contract is, that an annuity shall be granted, and shall be secured by bond, in consideration of which the estate shall be conveyed. The whole of this and the acts of the parties appear to me to shew that the construction of the contract is to discharge the land from the lien, the existence of which would render it almost unsaleable in the hands of the purchaser. I am of opinion that the proper mode of dealing with the decree which I have made, directing a security to be prepared, is to give a bond, and not a mortgage of the estate, to secure the annuity."

*Dixon v. Gayfer*, 21 Beav. 118.

### LAW OF EVIDENCE.

#### ENTRY BY DECEASED PERSON OF PAYMENT OF MONEY AGAINST HIS OWN INTEREST.

THE principle which governs the admissibility, as evidence to shew certain money had been paid, of an entry in the private journal of a deceased person, is thus stated by Sir Thomas Plumer, in *Short v. Lee*, 2 Jac. and W. 475:—"The principle is, that the entry is made by an individual conversant of the fact at a time when it was not in dispute, having no interest to make a false entry, and making one tending to charge himself."

Per the Master of the Rolls: "The usual instance is an entry by a person of a sum paid to him, as in *Higham v. Ridgeway*, 10 East, 109, which is a leading case upon the subject. In that case the entry was by a medical man of his receipt of his charge for having delivered a woman of a child on a particular day, and that was admitted as evidence of the age of the child. It is contended that the present memorandum is of no value, because it is the entry of the payment, and not of the receipt of the money by the person who made it; and therefore, as it tends to discharge himself, it is inadmissible. I am, however, disposed to consider the entry as admissible, on the ground that it does not discharge the person who made it, but, on the contrary, is an admission against his own interest." *Orrett v. Corser*, *Corser v. Orrett*, 21 Beav. 52.

### LEGAL EXAMINATION DISTINCTIONS.

To the Editor of the Legal Observer.

SIR,—I have read, with much interest, your statement and remarks in the LEGAL OBSERVER of the 18th September, on the subject of the intended distinctions to be made amongst the meritorious candidates who pass the examination, in order to be admitted on the Roll of Attorneys. You do not indicate the mode in which the examiners will proceed to ascertain the respective merits of those to whom prizes may be awarded; but I presume that

the examiners will adopt the course which prevails at academic examinations, and fix a certain definite number to each answer proportioned to its merit. Without going too minutely into the exact value of each answer, I conjecture that it will be sufficient to assign as it were, *three* degrees of merit: the highest where the answer is entirely accurate and complete; the next where it is accurate so far as it is given, but not full and complete; and lastly, though incomplete and partly inaccurate, yet shewing a certain amount of information on the subject of inquiry which may justify the lowest mark. If the answer be altogether wrong, a cypher or other mark of disapproval might be given. The lowest approval mark might be 1, the next 2, and the highest 3.

Let us see how this would work. The candidate for some of his answers might gain 3 marks, for others 2 or 1—making, say, 16 in each of the three essential papers or 48 in the whole, which would entitle him to pass. If a candidate procured a single mark only for each of the 15 answers he would not pass, because all the answers were more or less inaccurate and imperfect; but if entitled to a double mark on some of the points inquired into, he would pass, though none of the answers were entirely perfect. This mode of testing the knowledge of the candidate would evidently be very lenient, and if adopted at first would probably not be continued beyond a year or two.

It may be computed that if, according to the present practice, eight questions be correctly answered in each of the three branches of common law, equity and conveyancing, the candidate would be entitled to forty-eight marks.

Then if all the questions were answered he would obtain ninety marks, but this supposes that each question, though well answered to a certain extent, has not been completely answered, and therefore, the highest mark of three would not be affixed to any answer. It may reasonably be assumed that to secure the prize, several at least of the highest marks should be attained. The number of competitors may, therefore, be justly confined to such as have procured at least 100 marks of approval. It will be recollected that there are seventy-five questions in the whole, and if an average of two approvals were obtained the total would be 150. This amount of competition would be abundantly comprehensive.

Sir, I trust that these suggestions will so far accord with your views, as to entitle them to a place for consideration in your pages; especially as they may serve to follow up the friendly advice you have given to the future candidates to do honour to their

profession by gaining some of the intended prize. I shall look forward next term to the announcement that A. B., C. D. and E. F., who were article in such and such offices, have each been awarded a useful set of books. ATTORNERS.

As doubts and difficulties may be raised with regard to almost every improvement, we should not be surprised to find that some objections are made to this new feature in the examination; but we think it may be confidently anticipated that no injustice will be done and in case even of dissatisfaction at the rejection of any one of the candidates, an appeal can be made, as now, to the judges.

ED. L. O.

## NOTES OF THE WEEK.

VACATION ATTENDANCE AT JUDGES' CHAMBERS. MR. BARON BRAMWELL will attend at Chambers on Tuesdays and Fridays until further notice.

### COUNTY OF MIDDLESEX REGISTRATION.

The barristers appointed to revise the list of voters for the county of Middlesex intend holding their courts at the following times and places:—Thursday, September 25, the White Horse, Uxbridge; Saturday, September 27, the Black Dog, Belford; Monday, September 29, Sussex Hotel, Bouverie-street, Fleet-street; September 30, the Lords Justices Court, Lincoln's Inn; October 1, Belvidere Tavern, New-road; October 3, New Globe Tavern, Mile End-road; October 4, Green Man, Bethnal-green; October 6, Windsor Castle, Broadway, Hammersmith; October 8, Castle Inn, Brentford; October 9, Enfield Arms, Enfield; October 10, Chandos Arms, Edgware; October 11, Jack Straw's Castle, Hampstead-heath.

### LAW APPOINTMENTS.

Frederick Jenkins Abbott, Esq., Special Pleader, has been appointed Election Auditor for Lambeth.

John O'Connell, Esq., M.P., has been appointed Clerk of the Hanaper in Ireland, in the room of Christopher Fitzsalmon, Esq., deceased.

### INLAND BOOK POST.

The regulations relating to the inland book post have been extended, so as to include *printed letters* in the same manner as other printed matter.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Drysdale v. Piggott.* July 19, 1856.

DEBTOR AND CREDITOR—POLICY OF INSURANCE—PREMIUMS—BOND.

*Where a creditor, having his debt secured collaterally by a policy of insurance on his debtor's life, elects, on the refusal of the debtor or his surety under a bond to pay the premiums due, to keep the policy on foot: Held, reversing the decision of the Master of the Rolls, that he does so in favour of the party entitled, and subject to the amount of his debt, the expenses, interest, and costs.*

It appeared that in 1851 the plaintiff and his son, who was indebted to the defendant, executed a bond for the payment of £170 odd, with interest at 5 per cent., and it was agreed that an insurance for the sum of £200 should be effected in the defendant's name on the son's life, and the first year's premium be added to the debt; the whole amount of the debt to be repaid by nine quarterly instalments. It appeared that the defendant paid the second and third premiums on the policy, and that the plaintiff having refused to repay the amount, the defendant claimed the amount secured by the policy upon the son's death in 1854, although the debt had been discharged

in the previous September. This bill was thereupon filed by the plaintiff, who had taken out letters of administration to his son's estate, to recover the amount, less the premiums paid by the defendant. The Master of the Rolls having dismissed the bill with costs, this appeal was presented.

*Palmer and Tripp* in support; *Scheyn and Wickens* contra.

The Lords Justices said that, under the circumstances, the policy belonged to the plaintiff and his son, subject to the defendant's claim to be repaid his debt secured thereby. Then the plaintiff refused to pay the premiums which became subsequently due, and the defendant might have given up the policy, but having elected to keep it on foot, he must be taken to have done so for the party entitled, subject to the debt and his expenses, interest and costs. The appeal must, therefore, be allowed, and the plaintiff be entitled to redeem on payment of the debt, and the premiums, and costs, with interest at 5 per cent.

### Master of the Rolls.

*Turner v. Whitaker.* July 5, 1856.

WILL—CONSTRUCTION—CHILDREN OF DECEASED SON—PER STIRPES.

*A testator after giving annuities to his widow and granddaughter directed that on the death of his wife, her annuity should be equally divided between his two sons, but not the principal, which he bequeathed to their children to be divided equally among them at the death of his sons: Held, that upon the decease of a son, his children were entitled to their father's moiety of the capital.*

The testator by his will after giving annuities to his widow and his granddaughter directed that on the death of his wife, her annuity should be equally divided between his two sons, but not the principal, which he bequeathed to their children to be divided equally among them at the death of his sons. Upon

the widow's death both sons were alive, but one of the sons died in 1855, leaving four children, and the question was now raised whether such children were entitled *per stirpes* to their father's share.

*Palmer and G. Lake Russell* for the plaintiffs, the children; *Lloyd and Freeman* for the defendant, the other son; *Shapter* for his children.

The Master of the Rolls said that the testator clearly meant at the death of each of his sons and not at the death of the survivor, and the children were therefore entitled on their father's death to his moiety of the principal.

### Vice-Chancellor Stuart.

*Robson v. Earl of Dysart.* June 3, 1856.

MOTION TO DISMISS FOR WANT OF PROSECUTION—INSOLVENT DEFENDANT.

*A motion to discharge an order obtained by an insolvent defendant dismissing a bill for want of prosecution, was refused with costs, as irregular, on the ground that an insolvent defendant has the same right to such an order as any other defendant, but under the circumstances a month's further time was given to the plaintiff to file his replication.*

THIS was a motion on notice to discharge an order obtained by the defendant Captain, Douglas dismissing this bill for want of prosecution. The defendant's answer was filed in July, 1855, but it appeared that previous to the above order the defendant had applied under the Insolvent Debtors' Act, and his estate and effects vested in his assignee.

*Bazalgette* in support; *J. W. De L. Gifford* contra.

The Vice-Chancellor said that the motion was irregular, and must be dismissed with costs, as a bankrupt or insolvent defendant had the same right to move to dismiss for want of prosecution as other defendants. The plaintiff might, however, have a month's further time to file his replication.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### Appeals in Chancery.

#### ACKNOWLEDGMENT.

See *Limitations, Statute of.*

#### ACQUIESCENCE.

See *Trustee, 2.*

#### ADVERSE POSSESSION.

See *Parent and Child; Trustee, 1.*

#### AFFIDAVIT.

See *Tenant for Life.*

#### AGREEMENT.

See *Frauds, Statute of; Specific Performance, 2.*

#### ANNUITY.

*Bill to set aside, for return of consideration—Payment of debts.*—On a bill filed to set aside a deed securing an annuity as being void by reason of the return of the consideration under the 6th section of the act 53 Geo. 3, c. 141: Held by the Lord Chancellor, reversing the decision of the Master of the Rolls, in reference to an objection that no relief could be granted in equity, that the intention of the act

was to give the same power to a court of equity in regard to an annuity to be enforced by suit as to a court of Law in regard to an annuity to be enforced by action: Held, also, that the burthen of proof was on the plaintiff to make out that there was a return of the consideration within the meaning of the section; that if the consideration was actually paid to the grantor, the application of it by him in discharge of debts really due from him to the grantee would not be such return; nor (*semble*) would it be so even if the grantor had previously told the grantee that he would make such an application of it. *Pennell v. Smith*, 5 De G. M'N. and G. 167.

And see *Legatee; Specific Performance, 1; Vendor and Purchaser, 2; Will, 2.*

#### APPEAL.

*Motion for injunction after enrolment.*—Quare, whether the enrolment of an order, refusing with costs a motion for injunction, precludes the renewal of the motion before the Court of Appeal. *Attorney-General v. Mayor, &c., of Wigan*, 5 De G. M'N. and G. 52.

#### ASSIGNEE.

See *Interpleader.*

## ASSIGNMENT.

*Of debt—Stamp—Order for payment.*—Held, dismissing with costs an appeal from the Vice-Chancellor *Stuart*, 2 Smale and G. 141, that a written authority signed by a creditor, directed to his debtor and delivered to A. B. in this form:—"I hereby authorise you to pay to A. B. the sum of £ being the amount of my contract he having advanced me that sum" is a good assignment, if stamped as such, without being stamped as an order for payment. *Diplock v. Hammond*, 5 De G. M'N. and G. 320.

And see *Creditor's suit*.

## BEQUEST.

See *Mortmain Acts*, 2.

## BOND.

See *Principal and surety*.

## BREACH OF TRUST.

See *Trustee*, 2; *Will*, 6.

## CESTUI QUE TRUST.

See *Trustee*, 1, 2.

## CHURCH BUILDING ACT.

See *Mortmain Acts*, 1.

## CONSTRUCTION OF WILL.

See *Mortmain Acts*, 2; *Will*.

## CONTINGENT BEQUEST.

See *Will*, 1.

## CONVERSION.

See *Will*, 6.

## CORPORATION.

See *Mortmain Acts*, 2.

## COVENANT.

See *Vendor and purchaser*, 1.

## CREDITOR'S SUIT.

*Insolvency of assignor—Voluntary settlement*—18 Eliz. c. 5.—In December, 1845, the plaintiff obtained a judgment against his debtor, who in the same month, being otherwise largely indebted, conveyed his reversionary interest in certain real estate to trustees, upon trust for sale, and to hold the proceeds, in default of a joint appointment by himself and his wife, for the benefit of his wife and child; in May, 1846, a settlement of the proceeds of the sale was made in favour of his wife and child. Previously to the execution of the settlement, the plaintiff had sued out a writ of outlawry against the debtor who had absconded, and on his return in May, 1852, the plaintiff filed the present bill against him, the *cestuis que trust* and trustees of the settlement of May, 1846, for the purpose of impeaching it as voluntary. After the institution of the suit the debtor was declared insolvent, and his assignee was made a party to the cause. The defendants, the trustees and *cestuis que trust* of the settlement, alleged in their answers that the settlement of May, 1846, was in pursuance of the previous deed of December, 1845, and at the bar objected, that having regard to the outlawry, the plaintiff ought to have clothed himself with the legal title by a grant from the crown; that he ought also to have obtained a charging order under the 12th section of the act 1 & 2 Vict. c. 110; and that the judgment debtor having become insolvent, the right

of suit was in his assignee: Held, reversing the decision of Vice-Chancellor *Stuart*, declaring that the settlement of May, 1846, was void against creditors, first, that the objection as to the want of a grant from the crown was invalid, because the plaintiff's claim was paramount to the settlement, which was good as against the insolvent, whose estate only vested in the crown; secondly, that inasmuch as the funds which formed the subject of the settlement were in the names of trustees, not for the insolvent but for others, the proceeding by charging order would have been nugatory: and, thirdly, that the insolvency having occurred after the institution of the suit, the frame of the suit was right. *Goldsmith v. Russell*, 5 De G. M'N. and G. 547.

Cases cited in the judgment:—*Heath v. Chadwick*, 1 Phill. 649; *Colombine v. Penhall*, 1 Smale and G. 328; *Stanton v. Hatfield*, 1 Keen. 354.

## DEBTS.

See *Annuity; Assignment; Specific Performance*, 2; *Tenant for Life*.

## DEED OF SETTLEMENT.

See *Public Company*.

## DEMURRER.

See *Frauds, Statute of*.

## DEVISE.

See *Mortmain Acts*, 1.

## DILIGENCE.

See *Vendor and Purchaser*, 3.

## DISTRIBUTIONS, STATUTE OF.

See *Will*, 7.

## DOMICILE.

See *Husband and wife*.

## DUPLICATION OF CHARGES.

See *Will*, 9.

## ENROLMENT.

See *Appeal*.

## EQUITABLE MORTGAGE.

*Parol variation in terms of—Usury.*—Money was advanced before the passing of the 17 & 18 Vict. c. 90, at £6 per cent. on a promissory note, and a deposit of title-deeds of freehold property as a collateral security. Afterwards it was agreed by parol that a legal mortgage should be executed by the borrower to secure the amount advanced with interest at £5 per cent. per annum, but no mortgage was executed: Held, allowing an appeal from the Vice-Chancellor *Wood*, 1 Kay, 281, that the parol agreement was sufficient to change the contract to a legal one, and that a return and fresh deposit of the deeds was not necessary to take the second contract out of the Statute of Frauds. *James v. Rice*, 5 De G. M'N. and G. 461.

Cases cited in the judgment:—*Exparte Kensington*, 2 Ves. and B. 79; 2 Rose, 138.

## EQUITY TO SETTLEMENT.

See *Husband and wife*.

## EVIDENCE.

See *Foreign law; Jurisdiction; Limitations, Statute of; Trustee*, 3.

[To be continued.]

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, SEPTEMBER 27, 1856.

### NOTES ON THE MERCANTILE LAW AMENDMENT ACT, 1856.

THIS Act, which received the royal assent on the 29th July last, and came into immediate operation, is intended to remove the inconvenience occasioned by the difference, in some particulars, between the laws of England and Ireland and those of Scotland, in matters of trade.\* It relates, 1st, to the title to goods and their delivery; 2nd, to guarantees and sureties; 3rd, to bills of exchange and promissory notes; 4th, to the repairs of ships; 5th, to the limitation of actions on merchants' accounts and the disabilities occasioned by the absence of creditors and debtors beyond the seas; 6th, the authority of agents in binding their principals; 7th, the liability of co-contractors.

#### I. OF THE TITLE TO GOODS AND THEIR DELIVERY.

No writ of execution or attachment against the goods of a debtor will prejudice the title to such goods by a *bonâ fide* purchaser for a valuable consideration before an actual seizure or attachment, provided such purchaser had no notion of the writ (s. 1).

Very special provisions are made relating to the specific delivery of goods sold. In actions for breach of contract to deliver goods, the jury are to find (1) what are the goods remaining undelivered; (2) what sum the plaintiff would be liable to pay on the delivery; (3) what damages the plaintiff would sustain if the goods should be delivered under execution; (4) what damages if not so delivered.

Then, if judgment be given for the plaintiff, the court or judge may order execution to issue for delivery on payment of the sum found payable, without giving the defendant the option of retaining the same on payment of the damages. And if such goods cannot be found, then to distrain the lands and chattels of the defendant, until such delivery, or, at the plaintiff's option, the payment of the damages (s. 2).

#### II. OF GUARANTEES AND SURETIES.

The promise of any person to answer for the debt, default, or miscarriage of another

person, being in writing and signed by him or his authority, shall not be invalid by reason that the *consideration* for such promise does not appear in writing, or by necessary inference, from a written document (s. 3).

But no promise to answer for the debt, default, or miscarriage of another made to a *firm*, consisting of two or more persons, or a single person trading under the name of a firm, and no promise to answer for the debt, &c., of a firm, shall be binding *after a change* in any one or more of the persons constituting the firm, unless expressly stipulated (s. 4).

Every person who, being surety or liable for another, shall pay the debt or perform the duty, shall be entitled to have assigned the judgment, specialty, or other security held by the creditor, and such person shall stand in the place of the creditor; provided that no co-surety shall recover from another co-surety more than a just proportion (s. 5).

#### III. BILLS OF EXCHANGE AND PROMISSORY NOTES.

The acceptance of a bill of exchange, whether inland or foreign, made after 31st December, 1856, shall not be binding *unless in writing* on the bill; or, if more than one part, on one of such parts, and *signed by the acceptor* or by his authority (s. 6).

Bills of exchange and promissory notes drawn in any part of the United Kingdom, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and islands adjacent, and payable in the United Kingdom or those islands, are to be deemed *inland bills*; but this enactment is not to affect the *stamp duty*, if any, now payable (s. 7).

#### IV. REPAIRS OF SHIPS IN HOME PORTS.

In relation to the rights and remedies of claimants for repairs to, or supplies for, ships, the ports within the United Kingdom, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and adjacent islands, being her Majesty's dominions, shall be deemed *home ports* (s. 8).

#### V. ACTIONS ON MERCHANTS' ACCOUNTS.

Actions of account concerning the trade of merchandise between *merchant and merchant*, their factors or servants, must be commenced within six years after the cause of action, or if such cause has already arisen,

\* The Act is given in extenso, p. 332 ante.



then within six years after the passing of this act. And no claim which arose more than six years before the action, can be enforced by reason only of *some other claim comprised in the same account* within six years (s. 9).

It will be observed that this provision applies expressly to "the *trade of merchandise* between merchant and merchant;" but we presume will be construed to extend to bankers, manufacturers, and traders generally.\*

The limitation of actions by the 21 Jas. 1, c. 16, s. 3; the 4 Anne, c. 16, s. 17; the 53 Geo. 3, c. 127, s. 5; the 3 & 4 W. 4, c. 27, ss. 40, 41, 42; the 3 & 4 W. 4, c. 42, s. 3; the 16 & 17 Vic. c. 113, s. 20, shall not be extended beyond the period therein enacted, by reason only of the *creditor*, or one of the creditors, being, when the cause of action accrued, beyond the seas, or being imprisoned (s. 10).

Where the cause of action, with respect to which the period of limitation is fixed by the enactments above-mentioned, lies against two or more *joint debtors*, the time within which the action is to be commenced shall not be extended against the debtor who shall not be beyond the seas, by reason that one or more of the joint debtors is or are beyond the seas. And the creditor shall not be barred from suing the joint debtor after his return, by reason only of the judgment recovered against the other (s. 11).

No part of the United Kingdom, nor the islands of Man, Guernsey, Jersey, Alderney, and Sark, nor adjacent islands of her Majesty, shall be deemed *beyond the seas* (s. 12).

#### VI. AUTHORITY OF AGENTS.

In reference to the provisions of the 9 Geo. 4, c. 14, ss. 1 & 8, and the 16 & 17 Vic. c. 113, ss. 24 and 27, an acknowledgment or promise made in writing, signed by an agent of the party chargeable thereby, *duly authorised*, shall have the same effect as if signed by the party himself (s. 13).

#### VII. LIABILITY OF CO-CONTRACTORS.

In reference to the provisions of the 21 Jas. 1, c. 16, s. 3; 3 & 4 W. 4, c. 42, s. 3; 16 & 17 Vic. c. 113, s. 20, where there are two or more co-contractors or co-debtors, whether liable jointly or severally, no such co-contractor or co-debtor shall lose the benefit of the enactments, so as to be chargeable by reason only of payment of principal or interest by any other co-contractor or debtor (s. 14).

Rules and regulations are authorised to be made by the superior courts for giving effect to the act, and for framing forms of writs and proceedings; and the Common Law Procedure Act, 1852, ss. 223, 224, and the Common

Law Procedure Act (Ireland), 1853, ss. 233, 240, are incorporated in this act (s. 15). The act does not extend to Scotland (s. 17).

### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

#### POLICE (COUNTIES AND BOROUGH) ACT.

19 & 20 Vict. c. 69.

1. Where a constabulary is not already established for the whole of a county, the justices in general or quarter sessions to cause the same to be established; if already established in part of a county, then for the residue of such county.
2. Not to apply to counties where parties have sent to Secretary of State a report as required by 2 & 3 Vict. c. 93, for the establishment of a police force.
3. Where constabularies have been established in divisions of a county, such establishments to be consolidated into one county police force.
4. Her Majesty may by Order in Council, require separate police districts to be constituted in counties.
5. Her Majesty in Council, on representations from Boroughs, may arrange terms of consolidation with counties; power to Her Majesty to vary such terms from time to time.
6. County constables to have the like powers, &c. in boroughs as borough constables have in the county.
7. Constables to perform duties connected with the police as directed by justices or watch committees.
8. Constable not to receive to his own use fees for performance of his duties.
9. Borough constables disqualified from voting at certain elections.
10. Power to grant out of the Superannuation Fund gratuities to incapacitated constables who have not served fifteen years.
11. Deficiency in Superannuation Fund to be made up out of Police Rate.
12. Gratuities may be granted to officers superseded by the county police.
13. Power to grant superannuations to chief constables, to be paid out of the police rate.
14. Annual statement as to crime in counties and boroughs to be furnished to Secretary of State.
15. Power to her Majesty to appoint inspectors for inquiring into state and efficiency of the police in counties and boroughs, &c.
16. On certificate of Secretary of State that an ancient police has been established in any county or borough, one fourth of the charge for pay and clothing to be paid to the Treasury;
17. But not to any borough where population does

\* An attorney's bill of costs would not come within the meaning of the act. Unfortunately, some suits last more than six years; and the whole bill would be recoverable; yet it would be well to bar the statute by commencing an action.

- not exceed 5,000, and not consolidated with police of a county.
18. Provisions relating to borough police to be applicable to the police in the places referred to in section 20 of 3 & 4 Vict. c. 88, until discontinued.
  19. The separate police in such places (having a population of 15,000) not to be superseded without the authority of the Secretary of State.
  20. No agreement under section 14 of 3 & 4 Vict. c. 88, to be put an end to without the sanction of Secretary of State.
  21. Section 24 of 3 & 4 Vict. c. 88, repealed.
  22. Power to justices to purchase station houses or strong rooms provided under 3 & 4 Vict. c. 88, and cause the same to be paid for out of the county rates.
  23. Provisions of 8 & 9 Vict. c. 18, for purpose of purchases of station houses, &c., by justices, incorporated with this act.
  24. Provisions of 7 G. 4, c. 18, as to disposal of unnecessary station houses, &c., extended to this act.
  25. Powers of 15 & 16 Vict. c. 31, to continue in force in the county of Chester until police shall be established under this act.
  26. If two chief constables appointed in Cheshire, the preceding section to apply to district of each chief constable.
  27. Provision as to Superannuation Fund under 15 & 16 Vict. c. xxxi.
  28. As to superannuations to police officers who have served under 15 & 16 Vict. c. xxxi, and appointed under this act.
  29. Police rates in the county of Chester made liable to annuity paid to the widow of an officer who died in the execution of his duty.
  30. Interpretation of certain terms.
  31. 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88, and this act to be as one.
  32. Extent of act.

The following are the title, preamble, and sections of the act:—

An Act to render more Effectual the Police in Counties and Boroughs in England and Wales.

[21st July, 1856.]

WHEREAS an act was passed in the session holden in the second and third years of her Majesty (chapter ninety-three), "For the Establishment of County and District Constables by the Authority of Justices of the Peace," which act was amended by an act passed in the session holden in the third and fourth years of her Majesty, chapter eighty-eight: and whereas a police force has been established under the authority of the said acts in several counties and parts of counties in England and Wales: and whereas by the act of the session holden in the fifth and sixth years of King William the Fourth (chapter seventy-six), "To Provide for the Regulation of Municipal Corporations in England and Wales," provision is made for the appointment of constables in all boroughs in England and Wales which are subject to

that act: and whereas, under the said secondly-mentioned act, power is given to justices of counties and councils of boroughs to agree for the consolidation of the county and borough police establishments: And whereas, for the more effectual prevention and detection of crime, suppression of vagrancy, and maintenance of good order, it is expedient that further provision should be made for securing an efficient police force throughout England and Wales: be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. In every county in which a constabulary has not been already established for the whole of such county under the said acts of the second and third and third and fourth years of her Majesty, or either of them, the justices of such county, at the general or quarter sessions holden next after the first day of December, one thousand eight hundred and fifty-six, shall proceed to establish a sufficient police force for the whole of such county, or where a constabulary is already established in part of such county, then for the residue of such county, and for that purpose shall declare the number of constables they propose should be appointed, and the rates of pay which it would be expedient to pay to the chief and other constables, and shall report such their proceedings to one of her Majesty's principal secretaries of state; and upon the receipt from the Secretary of State of such rules as are mentioned in section three of the said act of the second and third years of her Majesty, all the provisions of the said acts of the second and third and third and fourth years of her Majesty shall take effect and be applicable in relation to such county, in like manner as by the said acts provided, upon the adoption of such acts for any county by the justices thereof, and the receipt of such rules as aforesaid from the Secretary of State, subject, nevertheless, to the amendments contained in this act.

2. Provided always, that the enactment hereinbefore contained shall not apply to any county where, before the said general or quarter sessions holden next after the said first day of December, the justices of the peace of such county have sent to the Secretary of State such report as is required by the said act of the second and third years of her Majesty, in order to establish a police force for the whole of such county, or for such residue thereof as aforesaid (as the case may be), and the proceedings upon and in relation to such report, and consequent thereupon, shall and may be had and continued according to the said acts as amended by the enactments herein contained.

3. In any county where, after the establishment, under the said acts of her Majesty or either of them, of a constabulary for any division or divisions thereof, constables have been or shall be appointed under such acts and this act, or any of them, for the residue of the county, or for divisions constituting together such residue, there shall be one general county police establishment, and any divisional police establishment or establishments which may have been constituted in such county, shall be consolidated with, and form part thereof, and a chief constable shall be appointed for such county, in like manner, and with the like powers, as in any case where a police force is established for the whole county in the first instance.

4. In case it appear to her Majesty in council, upon the petition of persons contributing, or who, on

the establishment of a constabulary under the said acts of the second and third and third and fourth years of her Majesty, or this act, will be liable to contribute to the police rate of any county, that a distinction should be made in the number of constables to be appointed to keep the peace in different parts of such county, it shall be lawful for her Majesty, by the advice of her Privy Council, to order and require the justices of such county to exercise the powers given by the said act of the third and fourth years of her Majesty, for the division of such county into police districts; and the said justices shall thereupon, in manner directed by such act, and subject to such approval as therein mentioned, divide such county into such police districts as shall appear to them most convenient, and declare the number of constables which ought to be appointed for each police district; and the extent of such districts, and the number of constables appointed for each may be altered as in the said act provided: and the expenses to be defrayed by each such police district shall be ascertained in the manner provided by the said last-mentioned act, and the police rates assessed and levied therein accordingly: provided, that notice of every such petition, and of the time when it shall please her Majesty to order that the same be taken into consideration by her Privy Council, shall be published in the *London Gazette* one month at least before such petition shall be considered.

5. In case it be represented to one of her Majesty's principal Secretaries of State by the council of any borough, that application has been made by such council to the justices of any county in or adjoining to which such borough is situate, to consolidate the police of such county or borough in the manner provided by the fourteenth section of the said act of the third and fourth years of her Majesty, and that such consolidation has not been effected, if shall be lawful for such principal Secretary of State to inquire into the terms of consolidation proposed, and to report thereon to her Majesty in council; and it shall be lawful for her Majesty, with the advice of her Privy Council, to fix the terms and conditions and date upon and from which such consolidation shall take effect, and thereupon the provisions of such last-mentioned act shall become applicable as if such consolidation had been effected by an agreement made under the said section, save so far as such provisions relate to the determination of such agreement; and it shall be lawful for her Majesty, with the advice of her Privy Council, at any time, and from time to time, to vary the terms of any such consolidation or at any time to determine such consolidation upon such terms as to her Majesty in council may seem just.

6. The constables of every county appointed under the said acts of the second and third and third and fourth years of her Majesty or either of them, or this act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

7. The constables acting under the said acts of the second and third and third and fourth years of

her Majesty, the fifth and sixth years of King William the Fourth, and this act, or any of the said acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in General or Quarter Sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require.

8. It shall not be lawful for any constable acting under the said acts of the second and third and third and fourth years of her Majesty, and the fifth and sixth years of King William the Fourth, and this act, or any of the said acts (other than a local constable appointed under the said act of the third and fourth years of her Majesty), to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable; but this enactment shall not extend to prevent the receipt by any such constable of any fee or other payment legally payable which he may be liable to account for and pay over to the treasurer of the county or borough, or otherwise for the use of the county or borough, or which may be payable to or applied in aid of, any police superannuation fund established or to be established in any borough, under the provisions of the act of the session holden in the eleventh and twelfth years of her Majesty, chapter fourteen, or of any local or other act of parliament.

9. No head or other constable already appointed or hereafter to be appointed for any borough, under the said act of the fifth and sixth years of King William the Fourth, except special constables, shall, during the time he continues to be such constable or within six calendar months after he has ceased to be such constable, be capable of giving his vote for the election of any person to any municipal office in such borough, or for the election of a member to serve in Parliament for such borough or any county in or to which such borough is situate, either wholly or in part, or adjoins, or for any borough within any such county, nor shall any such constable, by word, message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough, or to be a member to serve in Parliament for any such borough or county; and if any such constable shall offend therein he shall forfeit the sum of ten pounds to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the borough: provided always, that nothing herein contained shall subject any constable to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

10. It shall be lawful for the justices of any county in General or Quarter Sessions assembled, if they think fit, upon the recommendation of the chief constable, and upon his certifying that any constable belonging to the police force of the county, who has not served so long as fifteen years, is incapable from infirmity of mind or body to discharge the duties of his office, to order that such constable shall receive out of the Superannuation Fund mentioned in the said act of the third and fourth years of her Majesty such sum in gross as a gratuity upon his retirement as to the said justices may seem proper.

11. If at any time the superannuation fund mentioned in the said act of the third and fourth years of

her Majesty be insufficient (otherwise than by reason of any default of any treasurer or other person entrusted with the custody or management thereof) to pay the superannuation or retiring allowances and gratuities payable thereout, the amount which such fund shall from time to time be insufficient to pay shall be defrayed by the police rate, and, where the county is divided into police districts, shall be defrayed by the several districts as parts of the local expenditure thereof, rateably in proportion to the number of constables appointed for each such district respectively.

12. It shall be lawful for the magistrates in General or Quarter Sessions assembled, if they so think fit, to grant gratuities to such officers as may be removed from their appointments in consequence of the duties of such officers being transferred to persons belonging to the police establishment.

13. It shall be lawful for the justices of any county in general or quarter sessions assembled, if they see fit, to grant to any chief constable of the county, on his ceasing to be such chief constable, such annual sum by way of superannuation allowance as they think fit; and such superannuation allowance shall be paid out of the police rate of the county, and shall, in the case of a county which is divided into police districts, be deemed part of the general expenditure, and be defrayed accordingly: provided always, that no such allowance shall be granted to any chief constable under sixty years of age, unless the said justices be satisfied that he is incapable from infirmity of mind or body to discharge the duties of his office; and section eleven of the said secondly recited act, as to the proportionate amount of the superannuation allowance of any petty constable, shall apply to the superannuation allowance to be granted to any chief constable.

14. The justices of every county and the watch committee of every borough shall, in the month of October in every year, transmit to one of her Majesty's principal Secretaries of State a statement in such form as one of the said Secretaries of State may from time to time direct, for the year ending the twenty-ninth day of September then last, of the number of offences reported to the police within such county or borough respectively, the number of persons apprehended by the police, the nature of the charges against them, the result of the proceedings taken thereupon, and any other particulars relating to the state of crime within such county or borough which such justices or watch committee may think it material to furnish, and a classified abstract of all such reports and returns shall be annually prepared and laid before Parliament.

15. It shall be lawful for her Majesty, by warrant under her royal sign manual, to appoint during her Majesty's pleasure three persons as inspectors under this act, to visit and inquire into the state and the efficiency of the police appointed for every county and borough, and whether the provisions of the acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of her Majesty's principal Secretaries of State, who shall cause such reports to be laid before Parliament; and such inspectors shall be paid out of such money as may be provided by Parliament for the purpose, such salaries and allowances as shall be determined by the Commissioners of her Majesty's Treasury.

16. Upon the certificate of one of her Majesty's

principal Secretaries of State, that the police of any county or borough established under the provisions of the said acts and this act, or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth of September then last past, it shall be lawful for the Commissioners of her Majesty's Treasury to pay from time to time, out of the moneys provided by parliament for the purpose, such sum towards the expenses of such police for the year mentioned in such certificate as shall not exceed one fourth of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under the nineteenth section of the said act of the third and fourth years of her Majesty; provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the justices of such county, or to the watch committee of such borough, who may address any statement relating thereto to the Secretary of State; and in every case in which such certificate is withheld, a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee as aforesaid, shall be laid before Parliament.

17. No such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under the said act of the third and fourth years of her Majesty, or this act, the population of which borough according to the last Parliamentary enumeration for the time being does not exceed five thousand.

18. Until the constables or watchmen appointed in and for any parish, town, or place under the act passed in the session holden in the third and fourth years of King William the Fourth, chapter ninety, or under any local act authorizing the appointment of constables or watchmen, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constable or watchmen, are discontinued as a separate force in manner provided by section twenty of the said act of the third and fourth years of her Majesty and by this act, all the provisions of this act applicable to the constables of any borough acting under the said act of the fifth and sixth years of King William the Fourth shall be applicable to the constables of any borough acting under the said act of the third and fourth years of King William the Fourth, or under such local act as aforesaid, in and for such parish, town, or place, and until such discontinuance all the provisions of this act applicable to the watch committee of a borough shall be applicable to the inspectors, commissioners, or other persons having the appointment of constables or watchmen in and for such parish, town, or place, and the police of such parish, town, or place shall be visited and inquired into by the inspectors under this act; and the provision in this act enabling the Commissioners of her Majesty's Treasury to make payment towards the expenses of the police of a borough having a population exceeding five thousand, shall, until such discontinuance, extend to the police of such parish, town, or place as aforesaid having the like population.

19. Provided, that where any such parish, town, or place, having such constables or watchmen as aforesaid, contains, according to the last Parliamentary enumeration, a population of fifteen thousand persons or upwards, the chief constable of the county

in which such parish, town, or place is situate shall not give notice, under the said section twenty of the said act of the third and fourth years of her Majesty, that he is ready to undertake the charge of such parish, town, or place, without the previous authority of one of her Majesty's principal Secretaries of State; and notice of the intention of the chief constable to apply to the Secretary of State for such authority shall be published by such chief constable in such parish, town, or place, in manner directed by the said section twenty respecting the publication of the notice therein mentioned, fourteen days at least before such application is made.

20. No agreement made under section fourteen of the said act of the third and fourth years of her Majesty shall be put an end to without the sanction of one of her Majesty's principal Secretaries of State.

21. Section twenty-four of the said act or the third and fourth years of her Majesty shall be repealed.

22. Where a station house or strong room shall have been provided under the said act of the third and fourth years of her Majesty, section twelve, for any police district or division within any county in which the provisions of the said act of the second and third years of her Majesty, have not been put in force throughout the whole of such county before the passing of this act, and the cost of such station or strong room has been incurred out of, or now remains wholly or in part chargeable on, the police rate for such police district or division, the justices of the peace for the county wherein such police district or division is situate, at any quarter sessions to be held after the passing of this act, shall or may purchase such station house or strong room for such sum of money as may be determined by such justices, and hold the same for and on behalf of the county or riding for the purposes of this act, and pay the purchase monies for the same out of the general county rate for the said county; and where the cost of erecting such station house or strong room shall, at the passing of this act, be chargeable by way of mortgage, either wholly or in part, on the police rates for such police district or division, it shall be lawful for the said justices to transfer such charge from the police rates leviable in such police district or division to and continue such charge upon the county rate of the county in which such police district or division shall be situate; and the police rates of the said police district or division shall be thenceforth discharged from all future payments in respect of the said station house or strong room; and all mortgages or other instruments then operating by way of charge on the said police rates in respect of such station house or strong room shall be thereafter deemed to be charges on the general county rate of the said county, in the same manner as if the same had been originally charged on such county rate, and such station house or strong room shall thenceforth be the property of the said county for the purposes of this act.

28. For facilitating the purchase of lands and tenements for the purposes mentioned in section twelve of the said act of the third and fourth years of her Majesty, the provisions of "The Lands Clauses Consolidation Act, 1845," except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the said act of the third and fourth year of her Majesty and this act; and the expression "the promoters of the undertaking," in the said Lands Clauses Consolidation Act, shall for the purposes of such incorporation mean the justices of the peace of any

county in general or quarter sessions assembled; and the powers of providing station houses and strong rooms contained in sections twelve and thirteen of the said act of the third and fourth years of her Majesty and this act shall extend to authorise the providing of such station houses and strong rooms within any borough lying within or adjoining to the county for which the same may be provided.

24. The act of the seventh year of King George the Fourth, chapter eighteen, "To authorise the Disposal of unnecessary Prisons in England," shall extend to and include all station houses, lock-up houses, strong rooms, and the sites thereof, and all other lands and tenements whatsoever, which may at any time be vested in the justices of the peace of any county, or in any persons in trust for them, for the purposes of the police, and which in the judgment of such justices shall, for any reason whatever, have become unnecessary.

25. And whereas, in the county of Chester, a constabulary force is now maintained and regulated under "The Cheshire Constabulary Act, 1852" the said Cheshire constabulary force shall continue to act in their respective appointments, and shall be subject to the same authorities as heretofore; and "The Cheshire Constabulary Act, 1852," shall continue in force until a day to be notified by the chief constable to be appointed for the said county of Chester by writing under his hand to the justices for the said county in general quarter sessions assembled, as that on which he will be ready to take the charge of the said county, which notice shall be published within the said county in such manner as shall seem fit to the said justices; and upon the day so named the said Cheshire constabulary force shall be discontinued, and the powers and provisions of "The Cheshire Constabulary Act, 1852," shall cease and determine: provided always, that any rate authorised by "The Cheshire Constabulary Act, 1852," and duly made previously to the day on which the chief constable shall undertake the charge of the county of Chester as aforesaid, shall be levied and collected in the same manner as if this act had not been passed; and all sums of money collected and received, and not then applied, and to be collected and received as and for rates levied under the powers and authorities of "The Cheshire Constabulary Act, 1852," shall be applied, after defraying all charges to which the same shall be liable, in and towards payment of the police rates to be levied under this act and the said act of the third and fourth years of her Majesty, upon the respective townships and places within the hundreds or divisions of hundreds in the said county of Chester, by which hundreds or divisions of hundreds such sums of money shall have been respectively contributed, and shall be apportioned as nearly as may be rateably according to the proportions thereof respectively contributed by such townships or places; and the application of such monies by the clerk of the peace for the said county of Chester, certified and allowed by any two justices of the county, shall be binding and conclusive: provided also, that in case the rates levied and collected under "The Cheshire Constabulary Act, 1852," within any such hundred or division, shall be insufficient to defray the charges to which the same shall be liable, the deficiency shall be paid out of the rates to be levied within the said county of Chester under this act and the said act of the third and fourth years of her Majesty.

26. Provided further, that in case two chief constables shall be appointed for the said county of Chester

under section four of the said act of the second and third years of her Majesty, the last preceding section of this act shall be read and construed as applicable to separate districts of each of such two chief constables, and as if the same had been specially enacted with reference to such separate district instead of the whole county.

27. The superannuation fund formed under "The Cheshire Constabulary Act, 1852," shall (after repayment thereout to such officers of the said Cheshire constabulary force who may not be appointed officers under this act and the said acts of the second and third and third and fourth years of her Majesty, of such sums of money as shall have been deducted from their respective salaries, or contributed by them respectively to such superannuation fund, which repayments shall be made by the treasurer of such fund accordingly) form part of the superannuation fund to be formed in the said county of Chester under the provisions of the said act of the third and fourth years of her Majesty; and any allowance which the justices of the said county of Chester have, by virtue of the said Cheshire Constabulary Act, 1852, ordered to be paid out of the superannuation fund under that act, shall thereafter be paid out of the superannuation fund to be formed under the provisions of the said act of the third and fourth years of her Majesty.

28. The service of any officer in the said Cheshire constabulary force who shall be appointed an officer under this act and the said acts of the second and third and third and fourth years of her Majesty, shall be considered an equivalent to a service under such acts, for the purpose of estimating the allowance to be paid to any such officer out of the superannuation fund to be formed in the said county of Chester under the said act of the third and fourth years of her Majesty.

29. An allowance which the justices of the said county of Chester have, by virtue of "The Cheshire Constabulary Act, 1852," ordered to be paid to the widow of a constable who died in the execution of his duty, out of the rates to be levied and made on the hundred of Wirral under that act, shall be paid out of and be chargeable on the rates to be levied within the said county of Chester by virtue of this act and the said act of the third and fourth years of her Majesty, or on such one of the said rates, if such there be, as the justices of the said county in general quarter sessions assembled shall from time to time order and direct.

30. The word "county" shall, in this act, have the same meaning as is assigned to such word in the said act of the third and fourth years of her Majesty, except as to the soke or liberty of Peterborough, in the county of Northampton, which, for all purposes of this and the several recited acts shall be deemed and taken to be a county of itself; and the several provisions in this act and the recited acts shall apply and operate in, for, and concerning the said soke or liberty accordingly; and the word "borough" shall mean any city, borough, or place incorporated under the provisions of the said act of the fifth and sixth years of King William the Fourth, or which has otherwise become subject to the provisions of the same act; and every part of the Cinque Ports, two ancient towns of Winchelsea and Rye, and their several members and liberties, which is not within the municipal boundaries of a place named in one of the schedules (A) and (B) to the last-mentioned act, shall, for the purposes of the said acts of her Majesty and this act, be deemed to form part of the county in which the same is situate, and shall be dealt with,

under the said acts of her Majesty and this act, as a liberty, which, under the said acts of her Majesty, forms part of a county, notwithstanding it may be a member or liberty of a place named in one of the said schedules.

31. The said acts of the second and third and of the third and fourth years of her Majesty and this act, shall be construed together as one.

32. Nothing in this act shall extend to any part of the metropolitan police district or to the City of London.

## CRIMINAL PROCEDURE.

### I. OF APPOINTING AN ATTORNEY TO CONDUCT THE PROSECUTION.

It is extremely desirable that some regulation should be made as to the employment of attorneys to conduct the prosecution. It is in vain to suppose that any prosecution will be so conducted as to bring the case properly to trial unless it be confided to the hands of some competent person; but in many cases no attorney is at present employed, and in others low attorneys, by improper means, obtain the conduct of the prosecution for the sole purpose of getting all they can out of it, and wholly regardless of what the result of the case may be. It is submitted, that great benefit would accrue if the justice, at the time when he committed or bound over the prisoner, were required, as a general rule, to ask the prosecutor whether he intended to employ an attorney, and to write the name of any attorney he might select on the depositions; or, if the prosecutor did not name any attorney, or there was no one who could be considered as a prosecutor, that the justice should either appoint some attorney to conduct the prosecution, and write his name upon the depositions, or should direct the district officer hereinafter named to employ some attorney to conduct the prosecution. Such might well be the general rule; but there are some cases in which it would be well that the justices should exercise a discretion, although a prosecutor did appear. It is well observed by Mr. Brandt, a gentleman of very great experience in criminal proceedings (8 Rep. R. C. L. C. p. 308)—"The right of a private individual, who may be named as prosecutor, to appoint an attorney may be and is, I think, liable to abuse, and productive of mischief when such persons are in a low condition of life; for it often happens that, on strong solicitation by such parties, they appoint attorneys of incompetent abilities or inferior character, and through their own negligence, as well as that of their attorneys, they do not effectively carry out the prosecution. On the other hand, cases may occur where it may be extremely desirable that parties should be allowed to appoint their own attorney to conduct the prosecution." And he suggests that, "if the party injured made known to the magistrates, at the time of the investigation, that he wished to conduct the prosecution by his own attorney, that the magistrate should have the discretion of so allowing him to prosecute." The better rule would seem to be, that a prosecutor should be considered entitled, as of right, to appoint his own attorney, unless from his poverty or from his relationship to the defendant, or from other circumstances, the magistrates should be of opinion that the prosecution would not be properly conducted; and in such case it should be lawful for them, in their discretion, either to appoint an attorney, or to direct the district officer to appoint one as above mentioned.

Wherever an attorney's name appeared on the depositions, or an attorney was employed by the district officer, no other attorney should be allowed any costs for conducting the prosecution, unless he satisfied the court that there was reasonable ground for his conducting the prosecution instead of such other attorney.

It may be objected that this proposal, if carried into effect, would probably, in many instances, lead to the clerk to the magistrates being appointed to conduct the prosecutions. Even if this should turn out to be the case, the objection does not appear to be of any great weight, for there can be no question as a general rule that the clerks to the magistrates conduct prosecutions quite as well as other attorneys, and that they are not justly liable to the imputation of advising the magistrates to send improper cases for trial. And it must be observed that such clerks stand in a position which affords them considerable advantages, all tending to the benefit of the public. They necessarily become acquainted with the case from the beginning; they see the witnesses examined, and can thereby form an opinion as to their conduct in the witness-box; they require no copies of the depositions; in addition, it frequently happens now that one clerk conducts several cases at the sessions or assizes, and his remuneration for attendance may therefore be less for each case than that for the attendance of an attorney who has only one case there; and thus a saving to the public may be properly effected.

The appointment of an attorney when the case is before the magistrate would probably entirely destroy a most mischievous practice, thus described by Mr. Blagg (8 Rep. Rev. C. L. C. 825),—"a practice of late years has sprung up amongst the low grade of attorneys, always to be found in a country town, to traverse the whole country to look after the poorer class of prosecutors, and call upon them, and by cunning misrepresentations to induce them to give them authority in writing to conduct the prosecution, their sole object being to get hold of the county allowance, without the slightest anxiety as to the results of the prosecution; and from their connection with the description of persons constituting prisoners and their friends, they would be as likely as not to connive at a prisoner's escape rather than use any diligence to procure his conviction; and men of this stamp very commonly do not content themselves with the sum allowed to the attorney, but pocket a part of that granted to the prosecutor and witnesses, and frequently keep them at the county town several days after the prosecution is over before they will pay them any portion of the expenses allowed them; and amongst this kind of practitioners are some persons who are not attorneys at all, but pretend to be acting as the clerks of an attorney at a distance, who lends his name under a compact between them. I state all this as passing in this county (Staffordshire) under my own actual observation."

## II. OF THE EMPLOYMENT OF COUNSEL AND ATTORNEYS.

Usually both counsel and attorneys are employed in prosecutions at the assizes, and great complaints have been made by learned judges where that has not been the case; and it is conceived that the costs of both counsel and attorney are invariably allowed at the assizes; but this is by no means the case at the sessions. Different sessions have established different rules on this subject, and it is to be feared that these rules have, in some instances at least,

been made rather with a view to saving the expense in the first instance than with reference to the repression of crime, which ought ever to be looked upon as the primary object of all criminal prosecution.

In some counties the justices at sessions have made it a rule not to allow the expenses of either attorney or counsel, unless the justice who commits or bails the defendant certifies that the case is one in which they ought to be employed. Such a rule appears to be made without any legal authority. The 7th Geo. 4, c. 64, s. 22, enacts, that "the court before which any person shall be prosecuted or tried for any felony is hereby authorized and empowered, at the request of the prosecutor, or of any other person who shall appear on recognizance or subpoena, to prosecute or give evidence against any person accused of any felony, to order payment unto the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment, and also payment to the prosecutor and witnesses for the prosecution of such sum of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have actually incurred in attending before the examining magistrate and the grand jury, and in otherwise carrying on such prosecution; and also to compensate them for their trouble and loss of time therein," &c. &c. This clause clearly includes the costs of attorney and counsel, and under it they have always been allowed. Then by sec. 26 of the same act it is provided, that "it shall be lawful for the justices of the peace of any county, riding, &c., in quarter sessions assembled, to establish and from time to time alter such regulations as to the rate of any costs and expenses thereafter to be allowed by virtue of this act, as to them shall seem just and reasonable." It seems quite clear that this clause only empowers the justices to establish a scale of allowance for each particular item, and by no means authorizes them to determine that in certain cases no costs whatever shall be allowed for a particular item. Every prosecutor has a right to employ an attorney and counsel, and the justices have no more right to make a rule that in certain cases the prosecutor shall not be allowed the expense of counsel and attorney than that he shall not be allowed the expense of any one of his witnesses. The power also of determining where costs are to be allowed belongs to the court alone; whereas the rule in question in effect delegates that power to the committing magistrate. The 14 & 15 Vic. c. 55, s. 4, however, has taken away from the justices in sessions the power of making regulations as to the scale of costs under the 7th Geo. 4, c. 64, s. 26, and transferred that power, by sec. 5, to one of the Secretaries of State. Unfortunately, however, the regulations made by the justices were to continue in force until new regulations were made by the Secretary of State; and if any such regulations have been made, it is very recently.

Mr. Blagg, clerk to the magistrates, states (8 Rep. Rev. C. L. C. p. 825), that in Staffordshire the "county does not make any allowance to a solicitor at the sessions; but in order that the court may have the assistance of counsel, an arrangement has been made by the magistrates at the sessions for paying the partner of the acting clerk of the peace a fixed small fee in each case for copying the depositions, as sent in by the magistrates in the shape of a brief, and delivering it to counsel." And Mr. Blagg well states the objection to this

plan to be—First. It is matter of very doubtful propriety to make a person so closely connected with the clerk of the peace the common prosecutor of all indictments in the court where he is the presiding officer. Second. It must evidently lead to an immense number of acquittals, inasmuch as he pays no attention whatever to the evidence about to be adduced, but simply employs a boy to copy it, and hand it to counsel in rotation, upon a principle of equal division, without any reference to the qualifications of counsel; whereas it is well known that in many cases some further evidence is required to ensure the verdict beyond that which was ample to justify a commitment, and especially as regards mere technical proofs, which are frequently left to be looked after by those who conduct the prosecution; and as regards the accuracy of the indictment, an officer of this kind leaves it entirely to the prosecutor to prefer his bill and give his own instructions; and if there be any nicety as to ownership, or other legal points, they are entirely overlooked, and very probably a mistake is made which leads to an acquittal upon mere form. Third. Then even suppose the indictment to prove correct by chance, and the evidence taken by the magistrate sufficient for a conviction, there is no little inconvenience felt by the prosecutor going to the sessions, perhaps, for the first time in his life, and having no solicitor to direct him were to go to prefer his indictment and to look after its being prepared, and sent before the grand jury, to watch the bill being found, and to instruct him and his witnesses when and where they will be wanted, and to expedite the business, so that the trial may be quickly disposed of, and all the parties set at liberty to return home."

With reference to the general question as to the employment of an attorney to conduct the prosecution, it is stated in the answers of the committee of the Justices' Clerks Society (8 Rep. Rev. C. L. C. P. 320), that "many important cases of prosecution (important as respects the nature of the offence and the depravity of the offender) are rendered abortive for want of proper evidence being obtained, the witnesses not being brought together at the right moment, and kept from improper bias, and the whole case not presented to the court and jury in a clear and intelligible form, and all by reason of the absence of some controlling hand to direct and regulate all the many and complicated proceedings which the law interposes between the original charge and the final conviction of a criminal; because, as the law now stands, it is clearly not within the province of the committing justices or their clerk to seek for and obtain full and conclusive evidence in every case brought before them; their duty being properly and efficiently performed if, on the evidence brought before them by the prosecutor, a case of reasonable suspicion be established, they commit for trial, leaving the case to be subsequently more fully and effectually supported by a more strict and searching investigation;" and they go on to state that these and other matters combined tend very materially to the increase of crime, by the chance of escape, even where a prosecution does take place, in consequence of "the want of the case being properly got up against the prisoner, as well as the other chances which the ingenuity of his counsel at the trial may give him, unopposed, as is almost always the case at the sessions, by any counsel for the prosecution." Whether this passage presents a correct view or not of the duty of magistrates in preliminary investigations, it cannot be questioned

that it discloses very accurately what in reality does commonly take place, even in those counties where the magistrates have made no special rules as to the employment of an attorney.

The slightest reflection must convince any one that it is impossible that any case can be properly presented to a court or jury unless there be some one to conduct it, even if there be only evidence on the part of the prosecution, and still more so if there be witnesses for the defence. And if some person must be employed to conduct the case, it is essential to the regularity of the proceedings that it should be some one practically conversant with legal proceedings. It must, therefore, generally speaking, be the rule that counsel should conduct prosecutions. If there is no one to conduct them, the court is placed in a position in which no court ought ever to be placed. A judge or chairman has his own peculiar functions to discharge, and it is quite inconsistent with his position that he should have the additional duty of examining the witnesses for the prosecution; still more is it out of character that he should ever be placed in such a situation that he might feel it incumbent to put questions to the prisoner's witnesses, with a view to impeach their credit, and in order to prevent a fictitious defence from succeeding. If such objections were not, as as they clearly are, insuperable, neither a judge nor chairman can ever possess the information that is requisite to enable him to perform those duties which counsel usually discharge, as he can only know what is contained in the depositions, and can have no means of investigating the truth of any fact other than such as the depositions may afford. It is manifest, therefore, that counsel ought to be employed in every case.

If that be so, it follows as a necessary consequence that an attorney must be employed in every case also, as it is useless to employ counsel unless his instructions be such as to enable him to be really serviceable in the case. Now if the depositions are his only instructions, it is obvious that they will frequently afford a very inadequate means of knowledge. Very frequently they are insufficient for the purpose of conducting the case on the part of the prosecution, as they are silent as to facts most material to the case; and as they now only contain the evidence on the part of the prosecution, they can by no possibility afford counsel any means of knowing or meeting any defence that may be made by a prisoner. Again, in the course of a trial it often becomes essential to obtain information as to some fact, and if there be no attorney to apply to there is no means of ascertaining it at all. Lastly, there needs some one to follow up the investigation which has commenced before the magistrates, by obtaining additional evidence where necessary, more fully examining the witnesses, and seeing that all the witnesses are taken before the grand jury, and the case properly presented to the court: and if there be no attorney all this must necessarily be omitted.

—From Mr. Greaves' Report

## LAW OF VENDOR AND PURCHASER.

### POSSESSION OF TITLE DEEDS BY PURCHASE OF LARGEST LOT UNDER CONDITIONS OF SALE.

ONE of the conditions on a sale of some property in twelve lots was, that in all cases where two or more lots are held under the same title, the title deeds and documents now in the vendors' possession relating to



such lots, shall be delivered to the purchaser of the largest lot, or retained by the vendors, in case all the lots shall not be sold, and such purchaser or vendors shall enter into covenant with the purchasers of the other lots, at their expense, to produce such deeds and accounts when required.

The plaintiff purchased the largest lot in value and extent, but Messrs. Morland and Wilkinson purchased lots 3 to 12, which separately were less than the plaintiff's, but in the aggregate exceeded his purchase in extent and value.

On the question as to who was entitled to the custody of the title deeds, the *Master of the Rolls* made a declaration that the plaintiff was entitled to the custody, and directed the defendant to pay the costs of the suit, as it had been caused by his conduct. *Scott v. Jackson*, 21 Beav. 110.

### POINTS IN EQUITY PRACTICE.

#### EVERY DAY IN TERM A MOTION DAY—PRO CONFESSE.

Held by the *Lords Justices* that every day in Term is a motion day; and therefore that, under the 79th order of May 8, 1845, notice in the *Gazette* of a motion to be made on any specified day in Term to take a bill *pro confesso* is good, although the day in question may not be a day appointed for hearing motions. *Chaffers v. Baker*, 5 De G. M. & N., and G. 482.

#### APPOINTMENT OF RELATION OF CESTUI QUE TRUST AS TRUSTEE.

On a petition for the appointment as one of new trustees of a person who was related to the cestui que trust, the *Master of the Rolls* said:—"I cannot depart from the rule I have adopted of not appointing a near relative a trustee, unless I find it absolutely impossible to get some one unconnected with the family to undertake that office.

"I have always observed, that the worst breaches of trust are committed by relatives, who are unable to resist the importunities of their cestui que trust, when they are nearly related to them." *Wilding v. Bolder*, 21 Beav. 222.

### LAW OF COSTS.

#### UNDER THE COUNTY COURTS' ACTS.

On the trial of an action, the plaintiff proved his demand, amounting to £37 10s. 2d., but which was reduced by payments and a set-off to £4, for which a verdict was given for the plaintiff. The *Master* taxed the plaintiff's costs at £14 8s., but *Coleridge, J.*, at Chambers, had ordered the taxation to be reviewed, whereupon this rule was obtained to rescind such order.

*Jervis, C. J.*, said:—"We have considered this case, which was argued yesterday, and have come to the conclusion that the rule should be discharged. It was an application to rescind an order of my brother *Coleridge* directing a review of the taxation, the *Master* having allowed the plaintiff his costs, although he recovered only £4, and there was no certificate. The order for a review was resisted upon the ground that the amount claimed originally, £37 10s. 2d., had been reduced below £20 by a set-off. There

was a preliminary question raised before us, viz., whether the amount by which the verdict was reduced was to be dealt with as an advanced payment, or was strictly a set-off. But, independently of that, the more important question arose as to the effect of the recovery where the amount was reduced by a set-off, and not by payment. It was contended by *Mr. Hawkins* that, upon the true construction of the 13 & 14 Vict. c. 61, s. 11, the recovery was to be the criterion; and we are of that opinion. The 129th section of the first County Court Act, 9 & 10 Vict. c. 95, enacted that if any action should be commenced in a superior court for any cause (other than those provided for by the concurrent jurisdiction clause, s. 128) for which a plaintiff might have been entered in the county court, and a verdict should be found for the plaintiff for a less sum than £20, if the action is founded on contract, or less than £5, if it be founded on tort, the plaintiff should have judgment to recover such sum only, and no costs. Under that section, the only way of depriving the plaintiff of costs was by a motion for leave to enter a suggestion on the roll. That being found to be attended with great inconvenience, the law was amended in that respect by the 13 & 14 Vict. c. 61, the 11th section of which enacted "that if in any action commenced after the passing of that act in any of her Majesty's superior courts of record in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding £20, or if, in any action commenced after the passing of that act in any of her Majesty's superior courts of record in trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases thereafter (in ss. 12 and 13) provided; and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs," &c. The 12th section provides that the judge at the trial may certify to entitle the plaintiff to costs, though he should recover less than the sums before-mentioned, if it appears to him that the cause of action is one for which a plaintiff could not have been entered in the county court, or that there was a sufficient reason for bringing the action in the superior court. And s. 13 provided that if the plaintiff should make it appear to the satisfaction of the court or a judge that the action was brought for a cause in which concurrent jurisdiction was given to the superior courts by the 9 & 10 Vict. c. 95, s. 128, or for which no plaintiff could have been entered in the county court, or that the cause was removed by *certiorari*, the court or judge might, by rule or order, direct that the plaintiff should recover his costs. Then came the 15 & 16 Vict. c. 54, the 4th section of which repealed the 13 and 14 Vict. c. 61, s. 13, and substituted for it the following provision, viz., "in any action in which the plaintiff shall not be entitled to recover his costs by reason of the provisions of the 11th section of the 13 & 14 Vict. c. 61, whether there be a verdict in such action or not, if the plaintiff shall make it appear to the satisfaction of the court in which such action was brought, or to the satisfaction of a judge at chambers, upon summonses, that such action was brought for a cause in which concurrent jurisdiction is given to the superior courts by the 128th section of the 9 & 10 Vict. c. 95, or for which no plaintiff could have been entered in any such county courts by *certiorari*, or that there was sufficient reason for bringing such ac-

tion in the court in which such action was brought, then and in any such cases the court in which such action is brought, or the said judge at chambers, shall thereupon, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if the before-mentioned act of the 13 & 14 Vict. c. 61, had not been passed."

We think, therefore, under the 13 & 14 Vict. c. 61, s. 11, the amount recovered is the criterion to guide the Master, and that, when he sees that the sum recovered is under £20, and there is no certificate, and no rule or order under the 4th section of the 15 & 16 Vict. c. 54, he is not to allow the plaintiff any costs. That construction, in our opinion, satisfies every provision of the act. In the present case, the plaintiff has brought an action in the superior court, for which a plaint might have been entered in the county court, and he has recovered less than £20. He, therefore, is entitled to no costs." *Ashcroft v. Fowler*, 18 Com. B. 261.

## LEGAL MISCELLANEA.

### ANCIENT DEED OF EARL DERWENTWATER.

JAMES the third Earl of Derwentwater having been engaged in the Rebellion of 1715, was convicted of treason, and, notwithstanding his youth and amiable character, was beheaded on Tower-hill. The estimation in which he was held rendered him the more dangerous. His brother Charles, who was condemned at the same time, effected his escape, but was afterwards retaken, and his case furnished a singular instance of doubtful identity. Under his former sentence he was beheaded in 1745. The earl's large and numerous estates in several counties were forfeited. An original deed, executed by the earl in 1711, and other memorials of him, may be seen at the valuable museum of Mr. Crossthwaite, at Keswick. The deed contains some curious recitals, and purports to be a conveyance of a house in Keswick, freed from fine arbitrary, to fine certain, in consideration of £8. The following is a copy:—

**This Indenture**, made the tenth day of August, in the tenth year of the reign of our Sovereign Lady Ann, by the grace of God of Great Brittain and Ireland Queen Defender of the Faith, and in the year of our Lord one thousand seven hundred and eleven, **betwixt** the Right Honourable the Earle of Darwentwater, Viscount Radcliffe and Langley Baron of Lindale, and lord of the manor of Castlerigg and Darwentwater of the first part, and Thomas Harris, of Portingskill, in the county of Cumberland, yeoman, on the other part: **Witnesseth** that, whereas one Edward Grisdale was anciently seized of one customary messuage and a close or garth on the back of his house, called Grisdale's House and Garth, situate and being in Keswick, within his lordship the Earle of Darwentwater's said manor of Castlerigg and Darwentwater, of the ancient yearly rent of eight shillings and threepence, and paying a fine arbitrary at the will of the lord; and whereas the said messuage and garth did, some years since descend upon one Thomas Harris as cousin and next heir to the said Edward Grisdale, and the said Thomas Harris refusing to pay either the rents or fines then in arrear, or to be admitted tenant to the same, by reason the said house was become

wholly ruinous and uninhabitable, without being at more charge with the rebuilding and repairing of it than he believed the same would ever be worth to him, and not being able to pay the then rents and fines in arrear, did, about seven yeares since, give up the right, title, customary estate, interest, and possession which he, the said Thomas Harris, had in the said mansion house and garth, into the lord's hands, disclaiming any further interest, either to him or his heirs, in the same. **Now** know that the lords of the said manor, having ever since the time aforesaid successively had the said house and garth in their hands and possession, and the said Thomas Harris being desirous to purchase of the said Earle of Darwentwater the said house and garth, into tenancy or into customary estate of inheritance, as the same was anciently held by the said Grisdale, or former tenants thereof, by the same rents, customs, dues, and services, only save that when any fine shall happen to fall due to the lord or lords of the said manor, by death of lord or lords, or alienation of tenant, the tenant of the said house and garth shall only pay a fine certain of four yeares ancient rent for a fine, to be paid within six months next after the said fine shall fall due, by the death of the lord or by the death or alienation of tenant, as several other tenants within the said manor, some considerable time since, did purchase their tenements to the like fine certain. **Now this Indenture witnesseth** that the said James Earle of Darwentwater, for divers considerations him thereunto moving, and especially for and in consideration of the sum of eight pounds of lawful money of Great Brittain, paid in hand to his lordship's steward for his lordship's use, the receipt whereof the said earle doth acknowledge, and thereof and every part thereof doth acquit and discharge the said Thomas Harris, his heirs, and assigns; give, grant, bargain, and sell unto the said Thomas Harris the said messuage and garth, called Grisdale's House and Garth, with their appurtenances, to hold to him, the said Thomas Harris, his heirs, and assigns, as a customary estate of inheritance, as the same was formerly held by the said Grisdale. **Withing** and paying, therefore, yearly to the said James Earle of Darwentwater, lord of the said manor, his heirs, and assigns, the said ancient yearly customary rent of eight shillings and threepence, at the feast days or tymes accustomed; and likewise paying suits of court at the Lords' Court, or courts when held, and suits of mill at the lord's mill or mills within the said manor, and all other ancient duties and customs which have been anciently paid, and are now due, to be paid by the owner of the said house and garth, save only that, as aforesaid, the said Thomas Harris, his heirs, and assigns are only to pay a fourpenny fine—that is, four yeares' ancient rent—at the death of the lord, or at the death of tenant, or alienation of tenant, at the several days and tymes as the rest of the fine certain tenants within the said manor doe pay, or are obliged to pay, the same. **In witness** whereof, the parties to these presents have interchangingly sett to their hands and seals the day and year first above written.—(Signed) DARWENTWATER (L. S.).

Signed, sealed, and delivered in the presence of  
LEWIS ARTOIS, THO. ERRINGTON.

## LEGAL OBITUARY, 1855-6.

## ATTORNEYS AND SOLICITORS.

[Continued from page 342.]

(The names marked thus \* were members of the Incorporated Law Society.)

*Leach*, Edward, of Pembroke, Tenby, and Haverford-west. Clerk of the Peace for the County of Pembroke. Admitted on the Roll, Easter Term, 1825. Died, November, 1855.

*Ling*, Charles Burton, of Scarborough (firm—Ling and Nesfield). Admitted on the Roll, Mich. Term, 1850. Died, September 14, 1855.

*Lloyd*, Edmund, of Thornbury. Assistant Clerk of the County Court (firm—Crossman and Lloyd). Admitted on the Roll, Trin. Term, 1819. Died, June 4, 1855.

*Loney*, Joseph, of Macclesfield. Admitted on the Roll, Hil. Term, 1810. Died, July 7, 1855.

\**Low*, Archibald M'Arthur, of 56, Chancery-lane. Admitted on the Roll, Hil. Term, 1829. Died, May 6, 1856.

*Lowless*, William, of 2, Hatton-court, Threadneedle-street (firm—Lowless and Nelson). Admitted on the Roll, Easter Term, 1826. Died, September, 1855.

\**McGhie*, Willoughby, of Bath. Clerk to the County Court. Admitted on the Roll, Mich. Term, 1819. Died, October, 1855.

\**Millard*, Philip, of North Walsham. Admitted on the Roll, Trin. Term, 1809. Died, July, 1855.

\**Minet*, William Brissault, of 8, New Broad-street, City (firm—Minet and Smith). Admitted on the Roll, Mich. Term, 1838. Died, May 15, 1856.

*Moody*, Thomas Henry Croft, of Southampton (firm—Page and Moody). Admitted on the Roll, Easter Term, 1837. Died, November, 1855.

*Moor*, Charles, of Woodbridge (firm—C. and G. Moor). Admitted on the Roll, Hil. Term, 1797. Died, 1855.

*Morecroft*, Thomas, of Liverpool (firm—T. J. and W. F. Morecroft). Admitted on the Roll, Mich. Term, 1818. Died, March 30, 1855.

*Morris*, Thomas, of Warwick and Leamington. Admitted on the Roll, Trin. Term, 1819.

*Moser*, Robert, of Kendal (firm—Roger and Robert Moser). Admitted on the Roll, Mich. Term, 1828.

*Neild*, Thomas, of Manchester. Admitted on the Roll, Trin. Term, 1836.

*Owen*, James, of Liverpool. Admitted on the Roll, Mich. Term, 1816.

*Parker*, Robert Christopher, of Greenwich (firm—R. C. Parker and Son). Admitted on the Roll, Trin. Term, 1816. Died, September 8, 1855.

*Payne*, James Edwin, of 15, Coleman-street, City, and Wallingford. Admitted on the Roll, Hil. Term, 1848. Died, November, 1855.

*Peers*, Joseph, the younger, of Ruthin. Admitted on the Roll, Easter Term, 1851. Died, October, 1855.

*Phillips*, Edward, of Burton-on-Trent. Admitted on the Roll, Hil. Term, 1804. Died, January 9, 1855.

*Pigott*, Henry, of Ely. Clerk to the County Court. Admitted on the Roll, Mich. Term, 1807. Died, March, 1855.

*Pope*, Charles Lee, of 35, Fenchurch-street, City (firm—Bolding and Pope). Admitted on the Roll, Easter Term, 1840. Died, January 1, 1855.

*Pridham*, Joseph, of Plymouth (firm—G. and J.

*Pridham*). Admitted on the Roll, Trin. Term, 1830. Died, May 20, 1855.

*Radcliffe*, Henry, of Oldham (firm—Radcliffe and Murray). Admitted on the Roll, Easter Term, 1834. Died, June, 1855.

*Raper*, Robert, of Chichester (firm—Raper, Johnson, and Raper). Admitted on the Roll, Hil. Term, 1821. Died, December 3, 1855.

*Read*, George Thomas, of Bacup, near Rochdale. Admitted on the Roll, Hil. Term, 1843. Died, October, 1855.

*Reed*, John Frederick, of 19, Essex-street, Strand (firm—Jackson and Reed). Admitted on the Roll, Mich. Term, 1851. Died, May 5, 1855.

*Richardson*, William, of 47, Bedford-row (firm—Richardson and Talbot). Admitted on the Roll, Easter Term, 1819.

\**Roby*, John Henry, of 73, Chancery-lane, and 1, Hanover Villas, Brook-green, Hammermith. Admitted on the Roll, Trin. Term, 1843. Died, March, 1856.

*Roumieu*, John, of 9, New-square, Lincoln's Inn (firm—Roumieu, Walters, Roumieu, and Young). Admitted on the Roll, Hil. Term, 1814.

*Royle*, William, of Lymington. Admitted on the Roll, Trinity Term, 1828. Died, January 8, 1855.

*Saunders*, Joseph George, of Newbury and Greenham, Berks. Admitted on the Roll, Easter Term, 1829.

*Scatcherd*, Watson, of Morley, near Leeds. Admitted on the Roll, Easter Term, 1844. Died in 1855.

*Shillibeer*, Henry Webb, of 2, Great James-street, Bedford-row, and Taunton. Admitted on the Roll, Mich. Term, 1831.

*Shilton*, Caractacus D'Aubigny, of Southwell and Nottingham. Admitted on the Roll, Easter Term, 1808. Died, December 23, 1853.

*Shuttleworth*, Samuel, of 14, Gray's Inn-square. Admitted on the Roll, Easter Term, 1846. Died, October 18, 1855.

*Simpson*, James Brown, of Richmond, Yorkshire. Admitted on the Roll, Mich. Term, 1825. Died, June 16, 1855.

*Smart*, William, of 2, Fig Tree-court, Temple. Admitted on the Roll, Trin. Term, 1816.

*Smith*, John, of 40, Leman-street, Goodman's-fields. Admitted on the Roll, Trinity Term, 1826.

*Smith*, William Thomas, of Berwick-on-Tweed. Agent for the Law Fire Insurance Office. Admitted on the Roll, Easter Term, 1849.

*Sommes*, Francis, of 55, Old Broad-street, City, and Wokingham. Admitted on the Roll, Trinity Term, 1832.

*Stables*, Henry Edward, of 1, Copthall-court, Threemorton-street. Vestry Clerk of St. Bartholomew-exchange (firm—Stables, Burn, and Ware). Admitted on the Roll, Trinity Term, 1818.

*Staff*, John Rising, of Norwich. Clerk of the Peace, Town Clerk, and Clerk to the Visiting Commissioners in Lunacy. Admitted on the Roll, Mich. Term, 1811. Died, December 10, 1855.

*Suckling*, John, of Birmingham (firm—Suckling and Son). Admitted on the Roll, Trinity Term, 1834.

*Thomas*, Jeremiah Jones, of Oswestry. Admitted on the Roll, Mich. Term, 1836. Died, January, 1856.

*Tilman*, William Treby, of Devonport. Admitted on the Roll, Hil. Term, 1838.

\**Tindal*, Thomas, of 10, New-square, Lincoln's Inn (firm—Law, Tindal, and Hassey). Admitted on the Roll, Mich. Term, 1828. Died, April 23, 1856.

*Tresidder*, William Edward Walmisley, of St. Ives, Cornwall. Admitted on the Roll, Hil. Term, 1820. Died, September 26, 1855.

*Tyler*, John, of 6, Staple Inn, Holborn. Admitted on the Roll, Mich. Term, 1806.

\* *Vaisey*, John, of 2, South-square, Gray's Inn. Admitted on the Roll, Mich. Term, 1836. Died in 1855.

*Waugh*, George, of 5, Great James-street, Bedford-row (firm—Waugh and Mitchell). Admitted on the Roll, Easter Term, 1823. Died, January 16, 1856.

*Webb*, James Michael, of Holt. Admitted on the Roll, Mich. Term, 1840. Died, November 29, 1854.

*Webster*, Erasmus, of Belper, Derbyshire. Admitted on the Roll, Hil. Term, 1824.

*Weir*, John Sims, of 27, Nicholas-lane, City (firm—Beddome and Weir). Admitted on the Roll, Easter Term, 1838.

*White*, James, of Canterbury and Sandwich, Clerk to the Magistrates of Sandwich. Admitted on the Roll, Hil. Term, 1830.

*Whittington*, Thomas, of Bath (firm—Whittington and Gill). Admitted on the Roll, Hilary Term, 1830. Died, October 28, 1855.

*Wightwick*, Humphrey, of Ramagata. Admitted on the Roll, Mich. Term, 1808. Died, July 9, 1855.

*Wilkin*, James, of 217, Piccadilly. Admitted on the Roll, Trin. Term, 1835.

*Williams*, John, of Carmarthen. Admitted on the Roll, Hil. Term, 1831.

*Williams*, Sir John Bickerton, Knt., of The Hall,

Wem. Admitted on the Roll, Hil. Term, 1816. Died, October 21, 1855.

*Wright*, William Rose, of Huntingdon. Admitted on the Roll, Hil. Term, 1832.

*Wyatt*, William, of 23, Red Lion-square, and 12, Cavendish-road, Wandsworth-road. Admitted on the Roll, Easter Term, 1858.

## PROFESSIONAL LISTS.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From August 26th to September 19th, 1856, both inclusive, with dates when gasetted.

Henderson, Alfred, Frederick William Howard, and Frederick James Wilcocks, Bristol, attorneys, solicitors, and conveyancers, so far as regards the said James Wilcocks.—Aug. 26.

Farnell, Hugh, and Thomas Butts Tanqueray Willaume, 24, New Broad-street, City, attorneys and solicitors.—Sept. 2.

Potts, C. T., and John Graham. Sunderland, attorneys and solicitors.—Sept. 12.

Hadley, Nathaniel Layton, and Edward Jones Filder, 16, Gresham-street, city, and Ockley, Surrey, attorneys, solicitors, and conveyancers.—Sept. 16.

George, William Griffith, and William Wagner Mitchell, attorneys-at-law.—Sept. 18.

Abbott, George Washington, and Samuel Neale Driver, 12, Birchlin-lane, attorneys and solicitors.—Sept. 16.

Ward, Thomas, John William Ward, and Edward Collis, Newcastle-under-Lyne, attorneys and solicitors, so far as respects the said Edward Collis.—Sept. 19.

### COUNTRY COMMISSIONERS

To Administer Oaths in Chancery. Appointed under the 16 & 17 Vic. c. 78, with dates when Gasetted.

Newton, John, Leighton Buzzard.

Webster, Andrew, 3, Forth-street, Edinburgh, for Scotland.—Sept. 2.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*In re Viall ex parte Sergeant.* June 27, 1856.

#### PURCHASE UNDER DECREE—LUNATIC MORTGAGEE—COSTS OF ORDER UNDER TRUSTEES' ACT, 1850.

*An estate sold under a decree in a creditor's suit was mortgaged, and the mortgagee was of unsound mind, although not so found by inquisition: Held, that the mortgagee was liable for the costs of a vesting order under the 13 and 14 Vict. c. 60, s. 3; the other costs to be costs in the cause.*

THIS was a petition under the 13 & 14 Vict. c. 60, s. 3, by the purchaser under a decree in a creditor's suit for a vesting order of certain real estates directed to be sold and of which the mortgagee was of unsound mind, although not so found by inquisition.

Section 3 enacts that "when any lunatic or person of unsound mind shall be seized or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics, to make an order that such lands be vested in such person or persons in such manner and for such estate as he shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate."

*Wigram and Hemming* in support; *Elderton* and *Southgate* for other parties.

The Lords Justices in making the order said that the costs of obtaining it must be paid by the mortgagee,—the other costs to be costs in the cause.

### Master of the Rolls.

*Gilley v. Burley.* July 16, 1856.

#### MARRIAGE SETTLEMENT—CONSTRUCTION—BONUSES ON POLICY OF LIFE INSURANCE.

*Under a marriage settlement it was recited that the deceased had agreed to insure his life in £2,500, and that the same had been effected in the names of the trustees, and the said sum of £2,500 was settled upon the trusts therein declared, and he covenanted to pay the premiums. At the deceased's death there was a considerable amount of bonuses, which in the absence of any directions as to their being applied in reduction of the annual premiums had been added to the sum insured: Held, that the trustees of the settlement and not the husband's executors were entitled thereto.*

It appeared that under his marriage settlement, dated in 1825, it was recited that the deceased had agreed to insure his life in £2,500 in the Rock Life

Assurance Company, and that the same had been effected in the names of the trustees, and the said sum of £2,500 was settled upon the trusts therein declared, and he covenanted to pay the premiums thereon. The policy had, however, not been effected until a short while afterwards, when it was taken in his own name. By the rules of the office parties assuring were entitled to have the bonuses applied in cash or in reduction of the annual premiums, or added to the amount of the policy. The deceased had never directed which way he would have the bonuses applied, and they were accordingly added to the sum insured by the policy, and upon his death his executors claimed the amount thereof as against the trustees of the settlement.

*Selwyn and Surragé* in support; *G. Lake Russell*, for the trustees, contra.

The Master of the Rolls said that it was intended to settle the policy and not the specific sum of £2,500, and that the trustees were therefore entitled to the bonuses as well as the sum insured.

### Vice-Chancellor Wood.

*M'Nicol v. Kaye*. August 1, 1856.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE  
—COSTS OF INVESTIGATING TITLE AT CHAMBERS.

Held, that a purchaser, against whom a decree is made for the specific performance of a contract on a sale by auction, is liable to the costs of investigating the title at chambers, but the number of attendances for that purpose to be allowed was limited to two on the taxation of costs.

UNDER the decree in this suit against a purchaser for the specific performance of a contract on a sale by auction, a reference as to title had been made to the chief clerk, who found that a good title was made out on February 20th last. The case now came on upon further directions.

*Piggott and Druce* for the plaintiff; *Chandler and Hoare* for the defendant.

The Vice-Chancellor said, that as the purchaser had put the plaintiff to the necessity of filing his bill he must bear the expense of investigating the title at chambers, but that only two attendances before the chief clerk would be allowed in the case.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### Appeals in Chancery.

(Continued from page 360).

#### EXAMINATION.

*Of defendant vivâ voce where plaintiff objected below.*—Where a defendant tendered himself for examination vivâ voce below, and the plaintiff opposed his examination, the Court of Appeal declined acceding to a proposition of the plaintiff to examine him. *Hindson v. Weatherill*, 5 De G. M'N. and G. 301.

#### EXECUTOR.

See *Will*, 8.

#### FORECLOSURE.

*Suit.*—*Defendant may set up mortgagor's insanity.*—*Issue.*—Where a common foreclosure claim was supported by affidavits of the attesting witnesses to the mortgage deed, and the defendant, who was the heir-at-law of the alleged mortgagor, did not cross-examine the witnesses, but set up, by affidavit, the insanity of the alleged mortgagor at the time of the alleged mortgage: *Held*, on appeal from the Master of the Rolls (reported 18 Beav. 300), that, without instituting a suit of his own to set aside the mortgage, he might have its validity tried by an issue or an ejectment. *Jacobs v. Richards*, 5 De G. M'N. and G. 55.

#### FOREIGN LAW.

*Question of evidence.*—A question of foreign law, being one of fact, must be decided in each case on evidence adduced in it, and not by a decision on evidence adduced in another case, although similarly circumstanced. *McCormick v. Garnett*, 5 De G. M'N. and G. 278.

#### FRAUDS, STATUTE OF.

*Agreement in writing*—*Demurrer.*—A demurrer founded on the Statute of Frauds may be taken by demurrer.

A demurrer, for that it appears on the bill that the agreement therein alleged to have been entered into, is not in writing signed by the defendant, is not a speaking demurrer.

A memorandum that A. had paid to B. £50 as a deposit in part payment of £1,000 for the purchase of a house, the terms to be expressed in an agreement to be signed as soon as prepared: *Held*, not a sufficient agreement in writing.

An allegation that the defendant had approved of a draft agreement, but had asked that, in order to save him the trouble of waiting till it was copied he might be allowed to call and sign the fair copy in the morning, which he promised, but failed to do: *Held*, by the Lords Justices, overruling the decision of Vice Chancellor Stuart (reported 2 Smale and G. 115), not a sufficient allegation of fraud to preclude him from setting up the Statute of Frauds as a defence. *Wood v. Midgley*, 5 De G. M'N. and G. 41.

Cases cited in the judgment: *Poster v. Hodgson*, 13 Ves. 180, 184; *Maxwell v. Mountacute*, Prec. in Ch. 526; *Hammerley v. De Biel*, 12 G. and F. 4; *Walker v. Walker*, 2 Ask. 98; *Mackintosh v. Brown*, 6 Ves. 52.

#### FRAUDULENT DEVICES, STATUTE OF.

See *Tenant for life*.

#### FREIGHT.

See *Ship*.

#### GENERAL RELIEF.

See *Pleading*.

#### GRAFT.

See *Legatee*.

# Legal Observer, AND SUITORS' JOURNAL.

FRIDAY, OCTOBER 4, 1856.

AND

measures which the  
submitting to the  
session are either now,  
under the consideration of the  
ments to which such measures  
we deem it, therefore, a fitting  
city again to call attention to the ne-  
cessity of erecting new courts and offices of  
law and equity in the neighbourhood of the  
inns of court. The subject may also be ap-  
propriately brought forward in connection  
with the proposed great central street from  
St. Paul's to Long Acre and thence to Picca-  
dilly. The press has not been silent on this  
matter, and recently the *Times* noticed the  
progress of the street improvements, and  
particularly those in and near Chancery-lane,  
where many new building are in progress.

It will be recollected that the intended cen-  
tral street, so much needed for the constantly  
increasing traffic of the metropolis, is designed  
to pass by an archway over Farringdon-street;  
thence on the north side of the State Record  
Office and along Carey-street, through part  
of Clare Market to the top of Bow-street,  
where a new street to the north has recently  
been formed.

The best site for the new courts and offices  
being between Lincoln's Inn and the Temple,  
the new street would run on the north side of  
the building and the Strand on the south. On  
the west side a street would be formed in con-  
tinuation of Serle-street, and Turnstile widened  
into Holborn; the east side would be bounded  
by Chancery-lane.

The unquestionable advantage of this site  
is, not only that it forms the centre of the law  
district, but the centre of the metropolis; and  
is therefore equally convenient to the public  
as to the profession.

We may bear in mind likewise that the  
palace of Westminster, containing the Houses  
and Offices of Parliament, is now nearly com-  
plete, except for the necessary removal of the  
old, inconvenient and insufficient courts ad-  
joining Westminster Hall, the space of which  
is absolutely required to perfect the palace.  
It cannot be long before those discordant  
buildings are pulled down. It is to be deeply  
regretted that Parliament would not adopt  
the suggestions made in the petition of the

Incorporated Law Society in the year 1840,  
when Lord Truro, then the Solicitor-General,  
obtained a Select Committee, before which  
the most conclusive evidence of judges and  
their officers, of counsel and solicitors, was  
adduced, establishing the necessity of a removal  
of the courts to the vicinity of the inns of  
court. The judges, as in and prior to 1824  
(when the present courts adjoining West-  
minster were re-constructed), will soon be  
obliged to sit in the halls of Serjeants' Inn,  
Grays' Inn, and other societies, until the new  
building be erected.

It is scarcely necessary to remind our readers  
that since the case was before the House of  
Commons, the necessity of new courts has been  
greatly augmented. Then the Master of the  
Rolls did not sit at Westminster; then there  
was one Vice-Chancellor; now there are three.  
There were no Lords Justices. There were  
no chief clerks of judges; now there are eight.  
We have now six taxing masters, and the  
number of registrars is largely increased, all  
requiring offices for themselves and numerous  
clerks. The business of the Accountant-  
General has immensely increased. He has  
charge of sixty millions of suitors' money, and  
receives or pays fourteen millions annually.  
Where is the security against fire for his books  
and papers, and where is the accommodation  
for his staff of clerks?\*

We suppose the delay in providing adequate  
courts and offices has been occasioned by the  
apprehension that a large sum was requisite  
for the purpose. We come, therefore, to the  
consideration of the "ways and means" for  
defraying the expense; but first a word as to  
the amount of that expense.

It appears from the evidence before the  
Commons committee, that the purchase of the  
whole site, from Chancery-lane to New Inn  
and Clement's Inn, and the cost of the build-  
ing, would be nearly £1,200,000; but deduct-  
ing the value of ground rents of land not  
required for the courts and the value of

\* The chief clerk of the Accountant-General of the Court  
of Chancery described to the committee the insufficient and  
inconvenient condition of the offices in that important de-  
partment of the business of the court, showing that the  
former fire-proof rooms were obliged to be used for the  
additional registrars of the court; that the books relating  
to the large funds in court were not secured from fire; that  
the money in court, when the offices were built in 1775, was  
six millions, and had now increased to sixty millions; that  
the annual amount received and paid in the previous year  
was nineteen millions; that the business had largely in-  
creased, there being now ten registrars where formerly there  
were only two, and twenty-six clerks of the Accountant-  
General, instead of four. He also stated that there was an  
impossibility of increasing the accommodation in the present  
offices.

Wherever an attorney's name appeared on the depositions, or an attorney was employed by the district officer, no other attorney should be allowed any costs for conducting the prosecution, unless he satisfied the court that there was reasonable ground for his conducting the prosecution instead of such other attorney.

It may be objected that this proposal, if carried into effect, would probably, in many instances, lead to the clerk to the magistrates being appointed to conduct the prosecutions. Even if this should turn out to be the case, the objection does not appear to be of any great weight, for there can be no question as a general rule that the clerks to the magistrates conduct prosecutions quite as well as other attorneys, and that they are not justly liable to the imputation of advising the magistrates to send improper cases for trial. And it must be observed that such clerks stand in a position which affords them considerable advantages, all tending to the benefit of the public. They necessarily become acquainted with the case from the beginning; they see the witnesses examined, and can thereby form an opinion as to their conduct in the witness-box; they require no copies of the depositions; in addition, it frequently happens now that one clerk conducts several cases at the sessions or assizes, and his remuneration for attendance may therefore be less for each case than that for the attendance of an attorney who has only one case there; and thus a saving to the public may be properly effected.

The appointment of an attorney when the case is before the magistrate would probably entirely destroy a most mischievous practice, thus described by Mr. Blagg (8 Rep. Rev. C. L. C. 825),—"a practice of late years has sprung up amongst the low grade of attorneys, always to be found in a country town, to traverse the whole country to look after the poorer class of prosecutors, and call upon them, and by cunning misrepresentations to induce them to give them authority in writing to conduct the prosecution, their sole object being to get hold of the county allowance, without the slightest anxiety as to the results of the prosecution; and from their connection with the description of persons constituting prisoners and their friends, they would be as likely as not to connive at a prisoner's escape rather than use any diligence to procure his conviction; and men of this stamp very commonly do not content themselves with the sum allowed to the attorney, but pocket a part of that granted to the prosecutor and witnesses, and frequently keep them at the county town several days after the prosecution is over before they will pay them any portion of the expenses allowed them; and amongst this kind of practitioners are some persons who are not attorneys at all, but pretend to be acting as the clerks of an attorney at a distance, who lends his name under a compact between them. I state all this as passing in this county (Staffordshire) under my own actual observation."

## II. OF THE EMPLOYMENT OF COUNSEL AND ATTORNEYS.

Usually both counsel and attorneys are employed in prosecutions at the assizes, and great complaints have been made by learned judges where that has not been the case; and it is conceived that the costs of both counsel and attorney are invariably allowed at the assizes; but this is by no means the case at the sessions. Different sessions have established different rules on this subject, and it is to be feared that these rules have, in some instances at least,

been made rather with a view to saving the expense in the first instance than with reference to the repression of crime, which ought ever to be looked upon as the primary object of all criminal prosecution.

In some counties the justices at sessions have made it a rule not to allow the expenses of either attorney or counsel, unless the justice who commits or bails the defendant certifies that the case is one in which they ought to be employed. Such a rule appears to be made without any legal authority. The 7th Geo. 4, c. 64, s. 22, enacts, that "the court before which any person shall be prosecuted or tried for any felony is hereby authorized and empowered, at the request of the prosecutor, or of any other person who shall appear on recognizance or subpoena, to prosecute or give evidence against any person accused of any felony, to order payment unto the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment, and also payment to the prosecutor and witnesses for the prosecution of such sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate and the grand jury, and in otherwise carrying on such prosecution; and also to compensate them for their trouble and loss of time therein," &c. &c. This clause clearly includes the costs of attorney and counsel, and under it they have always been allowed. Then by sec. 26 of the same act it is provided, that "it shall be lawful for the justices of the peace of any county, riding, &c., in quarter sessions assembled, to establish and from time to time alter such regulations as to the rate of any costs and expenses thereafter to be allowed by virtue of this act, as to them shall seem just and reasonable." It seems quite clear that this clause only empowers the justices to establish a scale of allowance for each particular item, and by no means authorises them to determine that in certain cases no costs whatever shall be allowed for a particular item. Every prosecutor has a right to employ an attorney and counsel, and the justices have no more right to make a rule that in certain cases the prosecutor shall not be allowed the expense of counsel and attorney than that he shall not be allowed the expense of any one of his witnesses. The power also of determining where costs are to be allowed belongs to the court alone; whereas the rule in question in effect delegates that power to the committing magistrate. The 14 & 15 Vic. c. 55, s. 4, however, has taken away from the justices in sessions the power of making regulations as to the scale of costs under the 7th Geo. 4, c. 64, s. 26, and transferred that power, by sec. 5, to one of the Secretaries of State. Unfortunately, however, the regulations made by the justices were to continue in force until new regulations were made by the Secretary of State; and if any such regulations have been made, it is very recently.

Mr. Blagg, clerk to the magistrates, states (8 Rep. Rev. C. L. C. p. 825), that in Staffordshire the "county does not make any allowance to a solicitor at the sessions; but in order that the court may have the assistance of counsel, an arrangement has been made by the magistrates at the sessions for paying the partner of the acting clerk of the peace a fixed small fee in each case for copying the depositions, as sent in by the magistrates in the shape of a brief, and delivering it to counsel." And Mr. Blagg well states the objection to this

plan to be—First. It is matter of very doubtful propriety to make a person so closely connected with the clerk of the peace the common prosecutor of all indictments in the court where he is the presiding officer. Second. It must evidently lead to an immense number of acquittals, inasmuch as he pays no attention whatever to the evidence about to be adduced, but simply employs a boy to copy it, and hand it to counsel in rotation, upon a principle of equal division, without any reference to the qualifications of counsel; whereas it is well known that in many cases some further evidence is required to ensure the verdict beyond that which was ample to justify a commitment, and especially as regards mere technical proofs, which are frequently left to be looked after by those who conduct the prosecution; and as regards the accuracy of the indictment, an officer of this kind leaves it entirely to the prosecutor to prefer his bill and give his own instructions; and if there be any nicety as to ownership, or other legal points, they are entirely overlooked, and very probably a mistake is made which leads to an acquittal upon mere form. Third. Then even suppose the indictment to prove correct by chance, and the evidence taken by the magistrate sufficient for a conviction, there is no little inconvenience felt by the prosecutor going to the sessions, perhaps, for the first time in his life, and having no solicitor to direct him were to go to prefer his indictment and to look after its being prepared, and sent before the grand jury, to watch the bill being found, and to instruct him and his witnesses when and where they will be wanted, and to expedite the business, so that the trial may be quickly disposed of, and all the parties set at liberty to return home."

With reference to the general question as to the employment of an attorney to conduct the prosecution, it is stated in the answers of the committee of the Justices' Clerks Society (8 Rep. Rev. C. L. C. P. 3-20), that "many important cases of prosecution (important as respects the nature of the offence and the depravity of the offender) are rendered abortive for want of proper evidence being obtained, the witnesses not being brought together at the right moment, and kept from improper bias, and the whole case not presented to the court and jury in a clear and intelligible form, and all by reason of the absence of some controlling hand to direct and regulate all the many and complicated proceedings which the law interposes between the original charge and the final conviction of a criminal; because, as the law now stands, it is clearly not within the province of the committing justices or their clerk to seek far and obtain full and conclusive evidence in every case brought before them; their duty being properly and efficiently performed if, on the evidence brought before them by the prosecutor, a case of reasonable suspicion be established, they commit for trial, leaving the case to be subsequently more fully and effectually supported by a more strict and searching investigation;" and they go on to state that these and other matters combined tend very materially to the increase of crime, by the chance of escape, even where a prosecution does take place, in consequence of "the want of the case being properly got up against the prisoner, as well as the other chances which the ingenuity of his counsel at the trial may give him, unopposed, as is almost always the case at the sessions, by any counsel for the prosecution." Whether this passage presents a correct view or not of the duty of magistrates in preliminary investigations, it cannot be questioned

that it discloses very accurately what in reality does commonly take place, even in those counties where the magistrates have made no special rules as to the employment of an attorney.

The slightest reflection must convince any one that it is impossible that any case can be properly presented to a court or jury unless there be some one to conduct it, even if there be only evidence on the part of the prosecution, and still more so if there be witnesses for the defence. And if some person must be employed to conduct the case, it is essential to the regularity of the proceedings that it should be some one practically conversant with legal proceedings. It must, therefore, generally speaking, be the rule that counsel should conduct prosecutions. If there is no one to conduct them, the court is placed in a position in which no court ought ever to be placed. A judge or chairman has his own peculiar functions to discharge, and it is quite inconsistent with his position that he should have the additional duty of examining the witnesses for the prosecution; still more is it out of character that he should ever be placed in such a situation that he might feel it incumbent to put questions to the prisoner's witnesses, with a view to impeach their credit, and in order to prevent a fictitious defence from succeeding. If such objections were not, as as they clearly are, insuperable, neither a judge nor chairman can ever possess the information that is requisite to enable him to perform those duties which counsel usually discharge, as he can only know what is contained in the depositions, and can have no means of investigating the truth of any fact other than such as the depositions may afford. It is manifest, therefore, that counsel ought to be employed in every case.

If that be so, it follows as a necessary consequence that an attorney must be employed in every case also, as it is useless to employ counsel unless his instructions be such as to enable him to be really serviceable in the case. Now if the depositions are his only instructions, it is obvious that they will frequently afford a very inadequate means of knowledge. Very frequently they are insufficient for the purpose of conducting the case on the part of the prosecution, as they are silent as to facts most material to the case; and as they now only contain the evidence on the part of the prosecution, they can by no possibility afford counsel any means of knowing or meeting any defence that may be made by a prisoner. Again, in the course of a trial it often becomes essential to obtain information as to some fact, and if there be no attorney to apply to there is no means of ascertaining it at all. Lastly, there needs some one to follow up the investigation which has commenced before the magistrates, by obtaining additional evidence where necessary, more fully examining the witnesses, and seeing that all the witnesses are taken before the grand jury, and the case properly presented to the court: and if there be no attorney all this must necessarily be omitted.

—From Mr. Greaves' Report

## LAW OF VENDOR AND PURCHASER.

### POSSESSION OF TITLE DEEDS BY PURCHASE OF LARGEST LOT UNDER CONDITIONS OF SALE.

ONE of the conditions on a sale of some property in twelve lots was, that in all cases where two or more lots are held under the same title, the title deeds and documents now in the vendors' possession relating to



the present courts and offices, the ultimate cost would be reduced to £600,000. We conceive, however, that, instead of clearing, according to this estimate, no less than eight acres of ground, it would be sufficient (at all events, for the present) to take about four acres, commencing on the west side of Bell-yard, stopping on the east side of Boswell-court; thus continuing Serle-street on the one side, and widening Bell-yard on the other. The sum required on this plan would, of course, be much reduced; but power should be taken in the act to complete the entire project.

The war being happily over, the State might justly be required to bestow half a million on the essential duty of providing a proper edifice for the administration of justice in this vast metropolis, the urgency of which is not, however, confined to the inhabitants of the metropolis, but extends to the entire United Kingdom. Fortunately, however, the object may be effected without any burthen on the Consolidated Fund. There are four millions in the Court of Chancery unclaimed for a long period of time, the accumulated dividends on which amount to £1,200,000. Reserving the whole of the principal against the remote possibility of any part of it being required, it has been proposed to the government to take so much of this *surplus accumulation of interest* as will be sufficient to build these courts of justice. But then it should be recollected that the government are now paying a large annual rent for the offices connected with the courts. And to that extent, at least, the Treasury ought to reimburse the Fee Fund of the Court of Chancery. For under an act passed whilst Lord St. Leonards was Chancellor, it was directed that the surplus interest in question should be no longer accumulated, but paid into the fee fund, in order to reduce the fees paid by the suitors of the court.

This arrangement being made, we conceive that the Parliament might properly authorise the outlay required, and undoubtedly the suitors of the Court of Chancery would largely benefit by the establishment under one roof of all the courts and offices, whereby much of the time both of counsel and solicitors will be saved, and the business of the court proceed more rapidly and effectually.\* The present

\* At present the offices of the court are scattered in various parts of the law district, and many days in the busiest periods of the years are lost in passing from one office to another, and waiting if the officer be engaged, instead of being enabled in the same building of proceeding to another office where attention might immediately be given. Take the instance of taxing costs in the several courts. If one master be occupied, the attorney or his clerk, having several sets of costs, may go to another, and afterwards return to the first,—thus, in one morning, despatching various matters. A term or sittings may often be lost by the unavoidable delay that now occurs. The offices now situated in Chancery-lane, Lincoln's Inn, Southampton-buildings, the Rolls-yard, Serjeant's Inn, and the Temple, if placed in one building, under one management, instead of separate establishments, would be better regulated and comparatively less expensive. For instance, where there are now separate halls and waiting rooms, one larger room may serve conveniently for several departments.

Lord Chancellor has practically admitted the necessity of abandoning Palace-yard, and has wisely settled that the sittings of all the equity courts shall be held in Lincoln's Inn and the Rolls-yard.

The following is a summary of the funds suggested as partly, if not wholly, applicable for the building of the courts:—

The stock purchased with the *surplus* dividends arising from the suitors' fund, not directed to be invested, amounting to £1,241,188 9s. 7d.

The surplus fees, £201,028 2s. 3d.

The surplus fees of the three common law courts paid into the consolidated fund (out of which the Treasury pay pensions and compensations on abolished offices),\* £350,000.

The value of the offices now occupied by the masters, registrars, clerks of records and writs, and other offices, which will be provided for in the new building, say £40,000.

The annual amount of rent paid for the taxing masters, lunacy offices, &c., £1,200, which at twenty years' purchase would amount to £24,000.

The annual rent of the Queen's Bench offices, Crown Office, Common Pleas Offices, and Exchequer of Pleas (amounting to £2,400), estimated at £48,000.

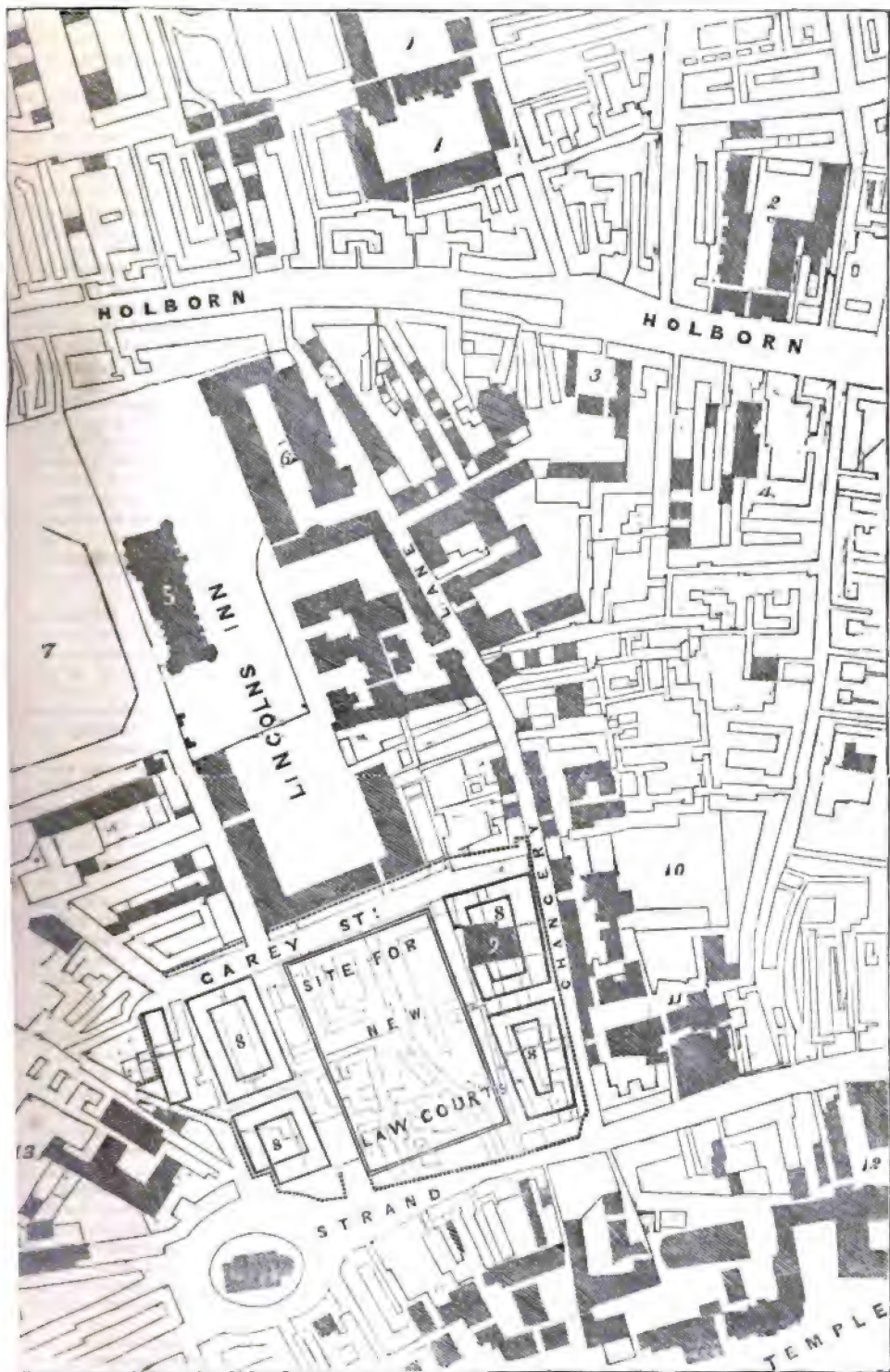
The value of the site at Westminster, now occupied by the courts there, estimated by Sir C. Barry at £86,000.

We have frequently during nearly 20 years brought this subject before our readers, and some years ago we laid before them a plan of the law district and the proposed site of the courts. It may be convenient again to devote a single page to this plan, of which we present a woodcut, taken in a diminished size from the designs of Sir Chas. Barry, and referred to in his evidence before the second select committee in 1845.

The principal streets and the sites of Lincoln's-inn and the Temple are named in the plan, and the following are the Inns of Court and Chancery, and other places, indicated by the following numbers:—

1. Gray's-inn.
2. Furnival's-inn.
3. Staple's-inn.
4. Barnard's-inn.
5. Lincoln's-inn New Hall.
6. Stone-buildings.
7. Lincoln's-inn-fields.
- 8, 8, 8, 8. Proposed Chambers for counsel and solicitors on the east and west sides of the proposed courts.
9. The Incorporated Law Society (which is about to be considerably enlarged).
10. Rolls-court and Record-office.
11. Serjeants'-inn and Clifford's-inn.
12. Serjeant's-inn, Fleet-street.
13. Clement's-inn and New-inn.
14. Lyon's-inn.

\* The pensions and compensations on carrying law reforms into effect ought to be paid out of the consolidated fund.



The shaded parts of the plan are the law offices and the chambers of barristers and solicitors; the dotted lines, marked thus . . . . ., show the present state of the proposed site; and the double line ===== the position of the proposed courts, and offices, and the new chambers of counsel and solicitors.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

ADVOWSONS ACT.  
19 & 20 Vict. c. 50.

1. Interpretation of certain terms.
2. Power to direct sale of an advowson where required by owners present at a meeting convened for the purpose.
3. Majority of owners present to bind minority.
4. Meeting to decide question of sale, and if decided in affirmative to appoint persons to be "elected trustees."
5. Certificate by two justices of consent of owners being obtained, and of names of "elected trustees" (if any), to be sufficient evidence.
6. If determined to sell advowson, the same to become absolutely vested in trustees, and trustees to proceed to a sale.
7. As to conveyance of the advowsons.
8. Receipts of trustees to be sufficient discharges.
9. Application of moneys.
10. As to investing moneys.
11. Concurrence of two thirds of trustees necessary to give effect to resolutions.
12. For supplying vacancies in the number of trustees.
13. Trustees not to be accountable for involuntary losses.
14. Vacancies in the incumbency before sale to be filled up.
15. Owners may consent to advance of money for purposes authorized by 17 G. 3. c. 58., 21 G. 3. c. 66, 7 G. 4. c. 66, and 1 & 2 Vict. c. 23.
16. Certificate of justices' evidence of consent.
17. Extent of act.

The following are the title, preambles, and sections of the act:—

An Act to enable parishioners and others, forming a numerous class, to sell Advowsons held by or in trust for them, and to apply the proceeds in providing Parsonage Houses, augmenting small livings, and to other beneficial purposes; and for giving other powers to such persons.

[July 14, 1856]

WHEREAS it is expedient to authorise the sale of advowsons in cases where the same are vested in, or in trustees for, inhabitants, ratepayers, freeholders, or other persons, forming a numerous class, and deriving no pecuniary advantage therefrom, in order that the monies arising from such sales may be applied to the erection, rebuilding, or improvement (where necessary) of parsonage houses, and to the augmentation of the livings (where the same are small), and to other beneficial purposes as hereinafter provided; and that other powers should be conferred upon such

persons: be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Unless there be something in the subject or context repugnant to or inconsistent with such construction, the following words shall have in this section and elsewhere in this act the respective meanings hereby assigned to them; that is to say,

The word "advowson" means an advowson vested in inhabitants, ratepayers, freeholders, or other persons, forming a numerous class, or in trustees appointed by or acting on behalf of such persons, such persons deriving no pecuniary advantage from the exercise of such right, but does not mean an advowson belonging to any endowed charity within the provisions of "The Charitable Trusts Act, 1853," and "The Charitable Trusts Amendment Act, 1855," or either of them;

The word "owners" means the inhabitants ratepayers, freeholders, or other class of persons in whom, or in trustees for whom, an advowson is vested, such persons deriving no pecuniary advantage therefrom;

The words "existing trustees" mean the trustees in whom for the time being an advowson is vested, by virtue of any act of Parliament, deed, or other instrument, in trust for or on behalf of such owners, and includes the survivors and survivor of such trustees;

The words "elected trustees" mean the persons appointed by the owners under the provisions of this act to effect the sale of an advowson, and includes the survivors and survivor of such trustees;

The word "trustees," without the addition of the words "existing" or "elected," includes both classes of trustees hereinbefore defined;

The word "incumbent" means the rector, vicar, or perpetual curate, as the case may be, of a church or ecclesiastical benefice, the advowson of which is to be dealt with under this act, and includes the officiating clergyman for the time being if the incumbent reside abroad or be incapable of acting.

2. The owners of an advowson may direct the sale of such advowson; and the incumbent for the time being of the church or benefice, if required in writing by ten owners, shall convene a meeting of the owners to be held at some convenient place near to the church, for the purpose of deciding whether or not such advowson shall be sold; and every such meeting shall be called by public advertisement to be inserted once at least in four consecutive weeks in some newspaper circulating in the county and neighbourhood in which such church shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting, and notice of such meeting shall also, not less than fourteen days prior to the holding thereof, be affixed upon the door of such church.

3. At the meeting so called the incumbent for the time being (if present) shall be the chairman, and if he be absent, then one of the owners present, being appointed by the other owners present, shall be the chairman, and the decision of the majority of the owners then present shall bind the minority and all absent parties.

4. Such meeting shall consider and determine the question whether the advowson shall be sold, and if

that question be resolved in the affirmative, the existing trustees (if such there be) shall be the persons to execute the purposes of this act; but if there be no existing trustees, the owners shall proceed to appoint at that meeting, or at some adjournment thereof, not less than five nor more than eleven persons, being owners, to be "elected trustees" for the purposes of this act, and the incumbent for the time being shall be *ex officio* an "elected trustee" in addition to the trustees so appointed.

3. A certificate under the hands of two justices (not being in themselves owners) having jurisdiction in the parish, township, district, or place within which the church or benefice in question is situate, certifying that the consent of the owners to a sale of the advowson has been duly obtained, and (in those cases where it is necessary that "elected trustees" be appointed) containing the names, residences, and description of the "elected trustees," shall be sufficient evidence of such consent and of such appointment, and any two justices having jurisdiction as aforesaid are hereby authorised and required, on application to them made, and on being duly satisfied of the truth of the facts, to certify accordingly.

6. Immediately upon the grant of such certificate the advowson shall become absolutely vested in the trustees for the purpose of effecting such sales, freed from all the uses, trusts, and declarations for the benefit of or otherwise relating to the owners then affecting the same, but subject to the right, title, estate, or interest (if any) of every other person therein; and the trustees shall, as soon thereafter as conveniently may be, sell the advowson by public auction, or by private contract, and subject to any special conditions, as to them shall seem expedient, and may buy in the same at any auction, and re-sell the same by public auction or by private contract without being answerable for any loss which may happen by such re-sale, and shall have full discretion in the premises, and may execute and do all contracts, deeds, and other acts necessary for effecting such sale.

7. Any conveyance of an advowson in pursuance of this act shall be by deed (duly stamped) under the hands and seals of any three of the trustees, in which the consideration shall be truly stated.

8. The receipt in writing of three of the trustees for any money paid to them by a purchaser of the advowson shall be an effectual discharge to such purchaser for the sum which in such receipt shall be acknowledged to be received, and such purchaser shall not be obliged to see to the distribution of such money, or be otherwise answerable or accountable for the loss, misapplication, or nonapplication thereof.

9. The monies to be received by the trustees from or by means of such sale shall be applied by them in the following order:—

First.—In payment of the costs, charges, and expenses occasioned by any meeting of owners as aforesaid, and by the execution of the powers by this act conferred upon the trustees, or incident thereto, respectively:

Second.—If there be no parsonage house attached to the advowson so sold, or if the parsonage house attached thereto be dilapidated or insufficient, then in payment of the expense of erecting a parsonage house, and of providing a site for the same, or in the reconstruction or repair of the existing parsonage house, or in making any requisite additions thereto, as the circumstances of the case may require:

Third.—If the living be under the gross yearly value of one hundred and fifty pounds, then in investing a sum sufficient to produce an annual income which, together with the existing annual income, will raise the yearly value of the living (exclusive of the parsonage house) to not exceeding one hundred and fifty pounds per annum:

Fourth.—If the fabric of the church be in such a state as to require immediate repair, then in the expenditure upon the fabric of a sum sufficient to place the same in sufficient repair:

Fifth.—In the investment of a sum the annual income whereof will, in the opinion of the trustees, be sufficient to maintain the fabric of the church in complete repair:

Sixth.—In the erection of schools in connection with the church, or of a chapel of ease in the parish, township, ecclesiastical district, or place in which such church is situate, or of a parsonage house to a chapel of ease, or in providing a site for a chapel of ease or parsonage house, or in the endowment of a chapel of ease, or in contributing to such objects or any of them, as the trustees may in their discretion see fit:

Seventh.—If there be no such purposes to which such moneys are applicable, or if there be a surplus of such moneys after answering such purposes, then such moneys, or the surplus thereof, as the case may be, shall be invested, and the annual income thereof shall be applied, in aid of the rates levied for the relief of the poor of the parish, township, or place in which the church is situate, or in aid of any improvement rate levied therein:

Provided always, that the owners at any meeting convened and held in manner herein provided, may determine that any one or more of the objects mentioned in the fifth, sixth, and seventh heads of application respectively shall have priority over any other object mentioned in those heads.

10. The trustees shall from time to time invest any moneys by this act directed to be invested by them in the purchase of any government or Bank of England or East India Company's Stock or securities, or on mortgage of freehold or copyhold lands in England or Wales, or in the mortgages or bonds of any company incorporated by special Act of Parliament, as they may deem fit.

11. The concurrence of two thirds at least of the whole number of trustees shall be necessary to give effect to any resolution of the trustees, and every resolution of the trustees in which that number shall concur shall be binding upon the other trustees and upon the owners on whose behalf such trustees are authorised to act.

12. If any of the trustees, before the complete execution of the trusts by this act devolved upon them, should become incapable or unwilling to act, or reside abroad, the vacancies may, in the case of existing trustees, be supplied in the manner provided by the Act of Parliament, deed, or instrument regulating their proceedings; and in the case of elected trustees the vacancies may be supplied by the owners at any meeting convened and held in manner herein-before provided with respect to the convening and holding of a meeting of owners for the purpose of consenting to the sale of an advowson; and a certificate of two such justices as aforesaid, and which such justices, on being satisfied of the truth of the facts, are hereby authorised and required to grant, that such vacancies have been

supplied, and containing the names, residences, and descriptions of the new trustees, shall be conclusive evidence of the facts, and thereupon such new trustees shall have the same property, rights, and powers in and with respect to the advowson as the trustees in whose place they were appointed.

13. Trustees acting by virtue of this act shall not be answerable or accountable for the acts, neglects, or defaults of any co-trustee, or for any agent or banker appointed by the trustees, or for any loss, except such as shall happen through their own wilful act, negligence, or default.

14. In case of the death, cession, or resignation of any incumbent of a benefice after the owners shall have directed the advowson of such benefice to be sold, but before the sale shall have been effected, then the persons in whom the right of presentation and nomination would but for this act have been vested shall (under and subject to the conditions under which such right would but for this act have been exercised) present and nominate a person to such benefice as if this act had not been passed.

15. The owners of an advowson, at a meeting convened and held in manner herein-before provided with respect to the convening and holding of a meeting of owners for the purpose of consenting to the sale of an advowson, may consent to the borrowing of money from "the Governors of the Bounty of Queen Anne for the Augmentation of the maintenance of the Poor Clergy," or from any other society or persons, for the purposes authorised by the acts of the seventeenth year of King George the Third, chapter fifty-three, the twenty-first year of King George the Third, chapter sixty-six, the seventh year of King George the Fourth, chapter sixty-six, and the first and second years of Queen Victoria, chapter twenty-three, as fully and effectually as any patron absolutely entitled to an advowson not within the provisions of this act may lawfully do.

16. The certificate of two such justices as aforesaid, which they are hereby authorised and required to grant on being satisfied of the truth of the fact, that such consent has been duly given, shall be conclusive evidence of the fact, and such certificate shall, for all purposes whatever, be deemed the consent of the patron within the meaning of those acts.

17. This act shall extend only to England and Wales.

#### EXEMPTION OF ROMAN CATHOLIC CHARITIES.

19 & 20 Vic. c. 76.

16 & 17 Vic. c. 187; 18 & 19 Vic. c. 124;  
Exemption continued until 1st September, 1857.

The following are the title, preamble, and section of the act:—

An Act to continue for a Limited Time the Exemption of certain Charities from the Operation of the Charitable Trusts Act, [29th July, 1856.

WHEREAS by the Charitable Trusts Act, 1853, it was provided, that such act should not for the period of two years from the passing thereof extend or be in any manner applied to charities or institutions the funds or income of which were applicable exclusively for the benefit of persons of the Roman Catholic Persuasion, and which were under the superintendence or control of persons of that persuasion: And whereas by the Charitable Trusts Amendment Act, 1855, such charities or institutions as

aforesaid were exempted in like manner from the operation of the said amendment act, and the exemption so extended was continued until the first day of September, one thousand eight hundred and fifty-six: And whereas it is expedient that such exemption should be continued as herein-after mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The said acts shall not, until the first day of September, one thousand eight hundred and fifty-seven, extend or be in any manner applied to the charities or institutions aforesaid.

## PROPOSED CRIMINAL LAW AMENDMENTS.

### EXTRACTS FROM THE REPORT OF MR. ORLEAVE, Q.C.\*

#### 1, Of imposing the Costs of the Prosecution, &c., upon Defendants.

As cases occur where defendants are punished of property, it appears but reasonable that in the case of conviction such property should be made available for the purpose of recovering the expenses which have been occasioned by the prosecution of the offence of which the defendant has been convicted. Let it be made the duty of the clerk of arraigns or clerk of the peace, wherever he is informed that the defendant is possessed of property, to issue a writ of a similar form to that given in the schedule to the 3 Geo. 4, c. 46, where recognisances are forfeited, and let it be the duty of the sheriff to execute it. The amount of the costs of the prosecution, as ascertained by the proper officer, should be inserted in this writ, and to them might properly be added the expenses of the maintenance of the prisoner in gaol, which might be ascertained by the certificate of the gaoler.

By the 8 J. 1, c. 10, a. 1, every person who is committed for any offence or misdemeanor, having means or ability thereunto, shall bear his own reasonable charges for conveying him to gaol, and the charges also of such as shall be appointed to guard him to such gaol, and shall guard him thither; and a warrant of distress may be issued to levy the amount. This enactment may well form a precedent for the course proposed, and not the less so because it includes innocent as well as guilty persons.

Lord Denman, C.J. (Appendix, 8 Rep. R.C.C.L. p. 218. observed, "The propriety of an enactment fixing the costs of each prosecution on the party found guilty, though equally novel in this country, appears to me unquestionable; even on the conviction of the lowest and most abject it might have some operation, and no trivial one, in deterring men of substance."

Perhaps it might be well to give the power, not only to the court before which the prisoner was convicted, but to any subsequent court, as property might be discovered to belong, or might accrue to the defendant at a subsequent period.

#### 2, Of awarding Compensation to the Party injured by the Offence.

Wherever persons possessed of property are convicted of any offence productive of injury to individuals, there seems to be no doubt that the party in-

\* These suggestions, which relate to the costs of prosecutions and defences, and the property of prisoners, particularly deserve the attention of solicitors engaged in this department of practice.

injured may, in an action, recover the amount of injury sustained; and it has been suggested that the jury, who convict a prisoner, might beneficially be empowered to assess the amount the defendant ought to pay by way of compensation for the injury he has inflicted. There appear, however, considerable grounds for questioning the expediency of such a provision. The criminal courts are already fully occupied with the business they have to dispose of, and the assessment of compensation would increase their duties. The question of compensation could hardly be left at the same time with the question of guilt to the jury, but must form an independent issue, to be determined after the prisoner had been found guilty; in truth, this proposal would engraft a civil cause upon the trial of an indictment; there must be an address for the prosecutor and prisoner, and the latter must be rendered competent as a witness, or in this proceeding he would be placed in a different position from that in a civil suit for the same injury. In many cases additional evidence would have to be produced as to the quantum of injury. If, however, it should be thought proper to give such a power, it would be advisable to vest a discretion in the court as to its exercise, otherwise at a heavy assize great inconvenience might arise.

At present the record of the conviction would not be admissible, in an action by the prosecutor against the defendant, to prove that the defendant committed the injury, as the parties to the proceedings would not be the same; and if it were proposed to make such record evidence for such purpose, the objection would be that it was unjust to admit it against the defendant, as he was incompetent to give evidence in that proceeding, though he was competent in any civil proceeding.

### 3. Of Conveyances and Sales of Property by Prisoners.

Without entering into any discussion as to forfeiture, it is suggested that it may deserve consideration whether a person who has committed an offence, ought to be permitted to dispose of his property after he has been charged with such offence before a magistrate. If it were provided that the defendant's property should be liable to the costs and expenses which have been pointed out, there can be little doubt that in almost every case a conveyance of such property would be made after the charge before the justice and before the trial; in fact, such conveyances are very commonly made at present in order to prevent a forfeiture. It seems but reasonable that an offender should be prevented from alienating his property, and thereby defeating the claim of the public on that property for the costs incurred in the prosecution, and of the injured party for compensation for the wrong inflicted upon him; and if any conveyance after a charge before the magistrate was declared invalid as against such claims, it would secure the public and the party injured, and would not unfairly prejudice purchasers, as the charge before a magistrate is so notorious that it might well be taken for granted that a purchase made after it was made with notice of it.

### 4. Of the Costs of Prosecution.

Perhaps there is hardly any matter more deserving of being placed upon a proper footing than the costs of prosecutions. In theory, every prosecution is supposed to be carried on at the instance of the Crown, and nominally the Crown is the prosecutor in every case; and, whenever a case is brought before

the magistrates in which there is sufficient evidence to raise a fair presumption that the defendant has committed an indictable offence, they possess the power to compel the party injured to prosecute, and the witnesses to give evidence on the trial. The power, which is thus vested in the magistrates, is given them for the public benefit, and not for the mere advantage of the prosecutor; and the object is that, by the prosecution of the particular offender, evil-minded persons should be deterred from the commission of the like offences. The whole procedure, in fact, has for its chief object the advantage of the public; and it is but reasonable that the public should bear all the expenses which are properly incurred in securing that object. The prosecutor, in many cases, has already received an injury, and it is to add injustice to that injury to compel him to undertake legal proceedings, if by so doing he is to be subjected to additional loss and inconvenience.

Lord Denman observed, (8 Rep. Rev. C. L. C. p. 312.) "That the injured man should bear any part of the expense of prosecuting, whether by so doing he recovers his lost property or not, is in the highest degree unjust."\*

And with regard to the witnesses, they are generally obliged to attend and give evidence, against their inclination, and, not unfrequently, at great inconvenience; they therefore ought to be remunerated sufficiently for their trouble and loss of time. Nor does it seem any fallacy to say that both the prosecutor and the witnesses are in the nature of public officers, and ought to be treated with liberality and consideration. The 7 Geo. 4, c. 64, ss. 22 and 23, seems plainly to have been framed with a view to the complete indemnification of the prosecutor and witnesses, for all their necessary expenses, trouble, and loss of time. It authorises the court to order payment to the prosecutor of "the costs and expenses which such prosecutor shall incur in preferring the indictment;" and also payment to the prosecutor and witnesses "of such sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate and the grand jury, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein." It is difficult for language to be found which could more plainly indicate that all reasonable and sufficient expenses should be allowed, and yet it should seem that the allowances have, in many cases, been very inadequate. Indeed, where a prosecutor has been a person of property, there is too much reason to believe that he has frequently had a considerable sum to pay, in addition to what he has been allowed.

Numerous are the instances which might be adduced in support of this observation, but two shall suffice. Mr. Griffin, of Shelton, Staffordshire, mentions the following case (8 Rep. Rev. C. L. C. 312):—

"I undertook at the last assizes in this county to prosecute a man for a burglary committed in this place during the memorable riots here. The prosecutor was a grocer, and unless I agreed to conduct the prosecution for the county allowance he would not have proceeded with it, not being bound over to prosecute; but the prisoner being in gaol for a minor offence, the man was found guilty, and sentenced to ten years' transportation. The bill was found on the first day, and I had to wait with all the witnesses seven days for the trial to come on, for which I was allowed £1, and a similar

\* His lordship indeed added, "and I think it equally so, that the public should be burthened by that expense," and suggested that the expenses should be fixed on the offender. His lordship did not, however, advert to the cases where the offender cannot be made to repay any expenses.



sum for a brief, comprised in five sheets, and pay my own expenses. *The allowance to the prosecutor and witnesses would not pay their actual expenses.*"

Mr. Shepherd, a magistrate's clerk, in the Faversham division, Kent, states another case (8 Rep. Rev. C. and C. p. 354):—

"A most atrocious murder took place in my division. The woman who was murdered was a poor labourer's wife, and had several children; the party who was suspected of having committed the murder was a vagabond living close in the neighbourhood, who had been connected with her, I have no doubt, improperly, and ultimately got jealous; he shot her and burnt her—she was a perfect skin and bone. The coroner sat upon the body, and one or two of the division magistrates came over to me, and said, 'We think this is a case requiring looking to; perhaps you will see to it.' Of course they had no power to tell me to do it. There was no person I could look to as the prosecutor, the parties were all poor. It was since the Poor Law Amendment Act, and I knew the parish could not pay. I took the hint, and went to work, and upon the exertions which I made the case was made out upon the evidence of, I think, six witnesses, sufficient to induce the coroner to commit. I saw the magistrates again afterwards, and they said, 'This is really a case which ought not to go unprosecuted; we do think the thing ought to be taken up.' Of course I understood what that meant; it was not anything which compelled me to do it, but still I felt I was in duty bound as, what I should like to see generally, the public prosecutor of the division to take the matter up. I did so. I had occasion to get witnesses from Manchester, where the party was apprehended. I subpoenaed twenty witnesses, independently of those whom the coroner had bound over. The case took from nine in the morning till eight at night. The party was convicted and executed, and I think a clearer case never went into court. I had the satisfaction of receiving the compliments of the judge and the bar, and of my brother clerks, who said the case was well got up; and I had the satisfaction of losing about forty pounds."

It will be observed, that both these cases were of a very serious character, and it is just in this class of cases that the limited allowance of costs is most likely to produce the most prejudicial effects. In such cases, it frequently happens that it is of very great importance that further investigations should take place after the case has been sent to trial, in order to obtain additional evidence; and equally so, that the witnesses should be carefully examined again, and therefore, either the attorney must go to them, or they must come to him for that purpose. So also it sometimes happens that the case really requires the opinion of counsel as to the evidence to be adduced and the indictment to be preferred. It is very much doubted whether the costs of these and the like matters are generally allowed. The result is, that cases of a serious nature are sometimes not so well prepared as they ought to be.

Another consequence of the inadequate remuneration allowed is, that the more respectable attorneys are not desirous of being engaged in prosecutions; whilst on the other hand, disreputable practitioners, intent only on the amount that may be gained, sometimes obtain the conduct of prosecutions, and neglect to adopt the most obvious steps for securing a conviction, and, it is to be feared, sometimes are the means of improper compromises being effected.

By the 7 Geo. 4, c. 64, s. 26, the justices in quarter sessions assembled were empowered "to establish, and from time to time to alter, such regulations, as to "the rate of costs and expenses thereafter to be allowed, as to them shall seem just and reasonable." The consequence was, that the scale of costs established in the different counties has materially varied in the amounts allowed, and not only so, but the costs at the assizes and at the sessions in the same county have varied in some instances. For these and other reasons the legislature seems to have thought that it was expedient to take away this power from the magistrates, and vest in the

Government, and accordingly the 14 & 15 Vic. c. 55, s. 4, repeals section 26 of the 7 Geo. 4, c. 64, and section 5 provides that one of her Majesty's principal Secretaries of State may revoke any regulations made under the repealed provision, and make regulations as to the rates or scales of payment of any costs, expenses, and compensations to be allowed to prosecutors and witnesses under any act of Parliament.

It is obvious, however, that the exercise of this power necessarily requires an acquaintance with many details, with which it is not very likely that the Secretary of State should be in any great degree familiar; and as the correctness of any scale of costs must depend upon its being founded on an accurate knowledge of details, it is plain that recourse should be had to those who possess that knowledge. Now the persons most conversant with such matters are the clerks of assize and those attorneys who have been extensively engaged in criminal business. Let then the Secretary of State employ some of the most experienced clerks of assize, and some of such attorneys, to draw up a scale of costs, and let them be furnished with the different scales of costs at present in force in the different counties. They should be instructed to frame a general scale of costs, unless there should appear in any case some special reason for making a variation as to any particular county; and such scale should be framed upon a fair and liberal principle, so that it should afford adequate and sufficient remuneration, and on the one hand should not err on the side of extravagance, and on the other should not be illiberal and parsimonious.

Such a scale should form the general rule for the allowance of costs in all cases; but it is obvious that no amount of ingenuity or ability could devise one scale that could be properly applicable to every case, as contingencies will arise for which no foresight can provide. A fixed scale of so much a mile may in all ordinary cases be perfectly right; but it cannot apply to the case of a bedridden witness who may safely be removed into court. Plans, models, experiments, &c., must on some occasions be made, and the costs of these must vary in each case. A discretion, therefore, must be left in order to meet the exigencies of particular cases; and this discretion may well be vested in the proper officer of the court, with the sanction of the court, and much assistance would be afforded in such cases by the district officer hereafter suggested, whose inquiries and knowledge of what had taken place would enable him to give most useful information.

The Committee on Public Prosecutors in their report notice—

"The great discrepancy which exists in the costs of prosecutions, both in counties and boroughs; and as the whole expense of these is now borne by the public income, they recommend that one set of fees be drawn up by the Secretary of State for the Home Department, applicable to all prosecution at assizes and sessions in all counties and boroughs." 2 Rep. p. xi.

##### 5. Of poor Prisoners' Defences.

Cases sometimes occur, not only of a common but of a serious character, in which poor persons are erroneously accused; and in these instances it happens occasionally that the accused are too poor to obtain the assistance of an attorney to conduct their defence, or to procure the attendance of witnesses on their behalf. Even if they should happen to know, which they generally do not, that they can secure the attendance of witnesses by subpoena, they are frequently too poor to cause a subpoena to

be obtained and served. It can hardly be considered consistent with justice that such persons should be left wholly defenceless, while every reasonable cost of preparing the case against them is borne by the public; and the court is sometimes placed in an embarrassing position in such cases, as in the course of a trial matters may be elicited, or the prisoner may make statements which satisfy the court that witnesses ought to have been present and examined on behalf of the defendant. Two remarkable cases occurred some years since before Mr Justice Patteson at Gloucester and Shrewsbury. In the former case two prisoners were indicted for a capital offence, and, at the close of the case for the prosecution no one in court probably entertained a doubt of their guilt; one of them, however, made so clear and lucid a speech, detailing where they had been at the time, and what they had done, and stating that witnesses had voluntarily come forward and remained as long at the assizes as they could afford to stay, that the learned judge was induced to inquire of the constable how far this statement was correct, and finding it was true as far as he could speak to the facts, the learned judge, after consideration, postponed the trial, and sent for the witnesses, who proved as clear an alibi as possible. In the other case the prisoner was tried for murder, and in his defence stated facts against the chief witness for the prosecution, and alleged that his son was detained in the workhouse to prevent his giving evidence of those facts in his behalf. In consequence of this the learned judge sent for the son, and he so far corroborated the father's statement, and contradicted the witness, that the jury acquitted the father. In these cases it so happened that the prisoners themselves were capable of explaining their defence, and the witnesses were near enough to be brought in the course of the day, and above all the learned judge most humanely postponed the trials; but it is obvious that it reflects no credit on the administration of criminal justice in England that innocent persons should ever stand in such a position by reason of poverty alone.

By the Code of New York, section 12, a defendant is entitled to be allowed counsel as in civil actions, or he may appear and defend in person and with counsel; and this provision is said to be taken from the constitution, art. 1, sec. 6. By the Code of Civil Procedure for the same state, sec. 511, art. 8, it is made the duty of an attorney and counsel "never to reject, for any consideration personal to himself, the cause of the defenceless or oppressed;" and by the Criminal Code, secs. 187, 188, the defendant is to be informed that he has a right to the aid of counsel in every stage of the proceedings, and the magistrate is to allow him time to send for counsel, and must require a peace officer to go for any counsel the defendant may name, and such officer is to perform that duty without fee; and by sec. 673, subpoenas must, at all times, upon the application of the defendant, and without charge, be issued; and by sec. 676, a peace officer must serve any subpoena on the part of the defendant. In addition to any punishment as for a contempt for disobedience to a subpoena issued on the part of a defendant, by sec. 682, the witness also forfeits to the defendant the sum of fifty dollars, which may be recovered in a civil action; but it does not appear that there is any express provision for assigning an attorney or counsel to a prisoner.

In our West Indian possessions it is believed that

counsel and attorney are assigned to prisoners in all cases.

By the law of England, also, in cases of treason, the accused, by the 7 & 8 Will. 3, c. 3, s. 1, is entitled to have not exceeding two counsel assigned to him by the court; and this provision might well form a precedent for the assignment of counsel in all capital cases.

It does not, however, appear desirable that counsel or attorney should be provided in every case; on the contrary, such a provision would be giving an undeserved benefit to guilty persons. It is suggested that it would be the better course to authorise some competent persons, in their discretion, to investigate the case of any poor prisoner, and if they saw reasonable grounds for believing that such prisoner had a defence which ought to be presented to the court, to direct an attorney to prepare such defence, and the court might in such case be required to assign counsel for the prisoner. Under the existing law no persons more fitted for such a duty could be selected than the visiting justices of the gaol. The gaoler generally becomes aware of the circumstances of a prisoner, and he might well be required to bring any such case to the notice of the visiting justices. Should, however, such a district officer be appointed as we have hereafter suggested, he would be a very fit person for making all necessary inquiries, and authorising a defence to be made for a poor prisoner.

Judges not uncommonly assign counsel in capital cases: unfortunately, however, this is usually done so late that there is hardly time for the counsel to master the details of the case for the prosecution, and no means of becoming acquainted with the facts of any defence the prisoner wishes to make, or being prepared with witnesses to support it.

With respect to the costs of any proceedings in court by poor prisoners, the courts are said to have a discretionary power at common law of allowing the accused to defend as a pauper (1 Ch. C. L. 412). But the authorities for this proposition are confined to proceedings in the Court of Queen's Bench. It would, therefore, be better to provide that where such a defence was directed, subpoenas and other proceedings should be gratuitously furnished by the proper officers.

#### 6. Of the Costs of Defendants.

Wherever an innocent person has been subjected to a criminal prosecution, justice seems to require that he should receive adequate compensation for the injury he may have received from the proceeding, or at least that he should be repaid all the expenses he has incurred in his defence. It is for the benefit of the public that prosecutions take place, and the public ought to remunerate any one who has suffered from a prosecution instituted for their benefit, if he be innocent.

Lord Brougham's twelfth resolution is—

"That the costs of every person tried and acquitted, or discharged for want of prosecution, should be paid out of the county rates, on a certificate of the court before whom he was tried or brought to trial, or of the magistrate by whom he was discharged."

A little consideration will show that this *general* provision would be highly inexpedient. It frequently happens that a prisoner is guilty, although he may not be convicted. Cases often fail through defects in the evidence, from the bad character of witnesses, and other causes, where no moral doubt can be entertained by any reasonable person of the guilt of a prisoner, although a jury, acting upon the principle



of giving the prisoner the benefit of a doubt, may acquit him. In such cases assuredly the prisoner ought not to receive any costs. Any such general rule also would lead to all sorts of defences being fabricated in the hopes of obtaining costs. Neither does the reasons for giving costs to defendants warrant such an extensive rule; for that reason rests solely on the defendant being improperly prosecuted, which can only be the case where he is innocent. No mere failure, therefore, in the prosecution should suffice to entitle the defendant to costs; there should be sufficient grounds to lead to the conclusion that the defendant was really innocent. Consequently the power to grant costs should be confined to those cases where there was something which showed *affirmatively* that the prisoner was innocent. It seems necessarily to follow that the power must be vested in the discretion of the court, and that that power should only be exercised in cases where the court felt really satisfied of the innocence of the prisoner. It would be well also that such discretion should not be exercised merely on what appeared in evidence in court. Cases not uncommonly occur when on the evidence presented in open court a prisoner's innocence may seem clear—nay sometimes so clear, that an unfortunate prosecutor may receive a severe reprimand,—and yet facts may exist behind the scenes which might change the whole aspect of the case. Subsequent inquiry may, therefore, be advisable in many cases, and the district officer hereafter suggested would be very useful in making any inquiries for the information of the court in such cases.

The select committee on public prosecutors are of opinion:—

"That, with proper checks and safeguards, the expense of witnesses called by the prisoner to prove his innocence ought to be allowed; and that this alteration would remove a manifest imperfection in the present system. That where a prisoner shall have heard the charge against him before the Justices of the peace, he shall be asked what he has to say to the charge, and whether he has any witnesses to speak to facts, in his defence, and, if so, the Justices shall call them for the prisoner, and, should they consider them credible, they shall bind them over to appear at the trial, their evidence being added to the depositions; in which cases their expenses shall be paid *similarly* to the expenses of the witnesses for the prosecution; the Judge or persons presiding at the trial, or the district agent, shall have the like power (2 Rep. p. x)."

It is not clear whether the committee mean the court to have a discretion as to the allowance of the expense of the witnesses for a defendant, where bound over by a magistrate; if they do not, it is obvious that any such plan might lead to great mischief, as the magistrates might be grossly imposed upon and the costs of witnesses, who were shown, at the trial, to be utterly unworthy of belief, would thus be paid by the public.

If the suggestion made in the last section relative to poor prisoners' defences should be adopted, the costs of witnesses for the defendant in any case where a defence was directed, might be left in the discretion of the court, even should the case turn out on the trial to be one in which the court was not satisfied of the innocence of the defendant, as in such a case the witnesses would have been caused to attend not on the procurement of the defendant alone.

Whenever after a conviction it should be clearly shown that a prisoner was innocent, justice seems to require not only that he should receive all the costs which he has incurred in his defence and in procuring his pardon, but also adequate compensation

for the sufferings he has endured whilst undergoing his sentence. As pardons emanate from the Home Office, no other tribunal could be pointed out better acquainted with the facts of the case, and therefore to that tribunal the power of awarding such a sum as should seem fitting might be well entrusted.

#### 7. Of the taxation of the bills of costs of attorneys of prisoners.

It is clear that if the costs of prisoners should be granted in any case, the bills of costs of their attorneys must be subjected to the taxation of the proper officer of the court which grants such costs, and it is further suggested that in every case the court, on the application of a defendant, or any of his friends who may have employed an attorney to defend him, should be empowered to refer such attorney's bill for taxation either to some officer of the court, or to some attorney, and that authority should be given to the court which ordered the taxation, or to any subsequent sessions of that court or to any of the superior common law courts, to enforce the certificate of the person who taxed the bill, or to punish the attorney for any misconduct certified by such person.

In practice it is conceived that the bills of costs of attorneys for prisoners are rarely, if ever, taxed, and the consequence is that an opportunity is afforded to low and unprincipled attorneys of getting considerable sums from prisoners on pretence of such sums being necessary for their defence, and of converting the principal portion to their own use. It is understood that it has been the practice with some such persons to represent to prisoners that counsel would not undertake a defence unless a certain fee were paid; by which means a large sum has been obtained from the prisoner or his friends, whilst the fee given to the counsel has been very much less than that which was represented as necessary, and the difference has never been accounted for by the attorney. A summary jurisdiction, vested in the criminal courts, over such practitioners would prove extremely beneficial.

## LAW OF DIVORCE.

### SPEECHES OF THE LORD CHANCELLOR AND LORD CAMPBELL.

Having in a recent number (*ante*, p. 385) given the speech of Lord Lyndhurst on the proposed alteration in the law of divorce, we now add the speeches of other law lords:

The Lord Chancellor would advert, in the first instance, to the question on which the committee were not altogether unanimous, viz., the propriety or impropriety of abolishing actions for criminal conversation. He thought that those actions had hitherto been raised mainly, if not entirely, in consequence of the rule laid down by their lordships that without a verdict in such an action a divorce could not be granted. Inasmuch, therefore, as the bill did away with that necessity and enabled a divorce to be obtained upon its own merits, without any such previous actions, he believed the consequence would be, from the good feelings of the community, although not from positive enactment, to make such actions extremely rare. He did not say that the bill would entirely abolish them, and he confessed, differing in that respect from his noble friend who had just addressed their lordships, that he did not think it would be expedient to declare

by positive enactment that in no circumstances could an action be brought. For he could conceive cases in which it might be perfectly reasonable that there should be pecuniary compensation, grievous injury might arise to a poor man from the misconduct of a rich one; there might be many cases in which the guilty act of an adulterer might deprive a poor man of a portion of his income and whenever that occurred moral justice would seem to require that pecuniary compensation should be given. A majority of the committee were therefore of opinion that actions for criminal conversation could not be abolished altogether.

With regard to the constitution of the tribunal to be established under the bill, the alteration adopted by the committee was not a very material one. As the bill originally stood, it was proposed that the court should consist of the Lord Chancellor the Lord Chief Justice of the Court of Queen's Bench, and one of the ecclesiastical judges—the Chief Justice, when he could not attend, to delegate another judge; but the committee suggested that, instead of his delegation, all the three Chief Justices, should have a seat, any one of them being sufficient.

As to the rights of a woman, divorced *à menâ et thoro*, with regard to property, he had from the first stated that he had no objection to such a woman being regarded as a *feme sole*, but he did not think it was a matter which should be introduced into the present bill. He was still of the same opinion, but nevertheless would not object to the recommendation made by the committee.

Then, with reference to the relief which ought to be given to the wife, the bill originally provided that she should be entitled to a divorce only in case of incest. The committee thought, however, that the right should be extended to such cases as bigamy, or adultery, with cruelty and desertion. To these alterations he was prepared to accede, but he thought it would not be safe or prudent to go further. Any one who proposed that the relief given to husband and wife should be reciprocal could not expect to have the concurrence of public opinion, for, unquestionably, the public entertained the belief that there was a criminality on the part of the wife in cases of adultery which did not attach to the husband. It was not unreasonable to expect that criminality on the part of the husband might be pardoned by the wife, but it was not at all likely that pardon would be extended from the husband to the wife. The cases could not be regarded as equal, and accordingly he was not disposed to go further in the direction of granting relief to the woman than had been proposed by the committee.

Lord Campbell earnestly implored their lordships to take the bill as it now stood. It was an immense improvement on the law of marriage and divorce in this country, and he thought they could not safely attempt more at the present moment. It was a most anomalous state of things that a marriage could not be dissolved in any particular case in this country without an act of Parliament. It would hardly be credited in future times that such a disgraceful system could have existed, and that before an act of Parliament could be obtained there must first have been an action brought for criminal conversation. He cautioned their lordships, however, against giving too great facilities for divorce. Such a course would be attended with the most unhappy consequences. It was only in cases of adultery that divorce could be safely given, and this was the

line pointed out by the great founder of our religion.

He approved of the alterations introduced into the bill by the committee. It was just that the earnings of a wife deserted by her husband should be preserved sacred for her own use; that she should in such cases be treated as a *feme sole*, and have a right to institute actions even against her husband.

In abolishing the necessity of actions for criminal conversation more difficulty arose. Of these actions he had always been ashamed, and in his tribunal he had often expressed his abhorrence of them. In conversation with foreign jurists he had been reproached with the existence of such actions, and had nothing to say in reply, for, though he was able to deny that men sold their wives with ropes about their necks, he could not deny that actions for crim. con. were permitted, nay, made necessary in certain cases, by the law. By rendering that action no longer necessary, he thought a great deal was done, and he hoped the effect would be to bring it altogether into desuetude. The difficulty the committee felt was that they could not altogether abolish the action without substituting some mode of criminal proceeding. The question viewed in this light was beset with difficulties, and therefore the committee, not wishing to abrogate the civil prosecution without substituting a criminal procedure, resolved simply to render the action no longer necessary for the purpose of procuring a divorce.

Then the question arose, should the same right of divorce be given to the wife as to the husband? No doubt the crime in both cases was essentially the same, but the consequences were not the same. When adultery was committed by the woman, all the purposes of the marriage were for ever annulled, and there could be no condonation on the part of the husband. He would not, therefore, go the length of giving the woman the same rights in this case as the husband. He would give her the right to a divorce in the case of incestuous adultery, as at present, and to that he was willing to add cruelty, bigamy, and desertion for a certain number of years: but further than that he was not prepared at present to go.

## POINTS IN EQUITY PRACTICE.

### USING DEPOSITIONS TAKEN IN ANOTHER SUIT—IRREGULARITY.

It appeared that Grace Thompson, acting without authority, sold a trust estate to George Liddell. In a suit by one of the *cestuis que trustent* against the representatives of Grace Thompson to recover the purchase money, George Liddell, who was not a party, was examined as a witness. Others of the *cestuis que trustent* instituted the present suit against the representatives of George Liddell to recover the estate itself, and an order of course was obtained therein on petition to read and make use, at the hearing, of the depositions taken in the former suit, saving all just executions.

The Master of the Rolls discharged the order with costs.

*Hope v. Liddell*, 21 Beav. 180.

### DEPOSITING COURT ROLLS OF MANOR FOR INSPECTION.

THE usual order was made for the deposit, by the defendant, the acting steward of a manor, for the inspection by the plaintiff of all documents, &c., in

his possession. Part of these consisted of the court rolls of the manor.

Upon an application for the rolls to be examined instead of being deposited, the *Master of the Rolls* said:—"I think that if this matter were before me in the first instance, I should not have compelled the deposit in court of the Court Rolls, though I should have allowed them to be inspected, at all reasonable times, at the office of the solicitor, or at some other convenient place; I certainly should not take away the court rolls from the acting steward, for though they may not be absolutely required at the present time, they may be required at any moment. Here is a person who is said not to be the steward, but to be acting as steward; I cannot determine his right to the office upon an interlocutory proceeding. The court considers that the person depositing documents has the right to the possession of them, and the custody of the court is that of the person making the deposit. In the case of merchants' books it is a question of convenience and inconvenience; the same principle is applicable to court rolls, and I must direct the production to be at the steward's in London."

*Carew v. Davið*, 21 Beav. 218.

## LAW OF ATTORNEYS AND SOLICITORS.

RE-ADMISSION OF, ALTHOUGH COPY AFFIDAVIT LEFT AT COMMON PLEAS C. J., AND NOT AT THE Q. B.

It appeared that in January, 1852, Mr. Thomas Makinson was struck off the rolls of the courts of common law and of Chancery at his own request, in order to be called to the bar, and that after having entered himself of Lincoln's-inn, and kept his terms for some time, he abandoned his design of going to the bar, and was desirous of renewing his practice as an attorney. He accordingly obtained a rule of the court for his re-admission, but upon its appearing that the copy affidavit required by the 7th rule of Hilary Term, 1853, to be left at the chambers of the Lord Chief Justice of the Court of Queen's Bench had been by mistake filed at the chambers of the Lord Chief Justice of this court, the officer declined to draw up the rule.

An application was afterwards made to *Martin, B.*, at chambers upon an affidavit setting forth these facts, and stating that "the object of the rule has been attained, Mr. Maugham, the Secretary of the Law Institution, having informed the deponent that the said copy affidavit was duly received by him, and that it was referred to the council, who had no cause to shew." An order was thereupon made that "the clerk of the rules of the Court of Common Pleas do draw up a rule to re-admit Thomas Makinson an attorney, notwithstanding the irregularity in leaving a copy affidavit at the chambers of the Chief Justice of the Common Pleas instead of the chambers of the Chief Justice of the Queen's Bench." Rule accordingly.

*Ex parte Makinson*, 18 Com. B. 661.

## LAW OF COSTS.

OF PARTIES TO SPECIAL CASE UNDER TURNER'S ACT WHERE ESTATE ADMINISTERED.

A SPECIAL case was submitted, with the consent of

the parties for the opinion of the court under the 13 & 14 Vic. c. 35, upon a question of construction arising out of a will. It appeared that the testator's estate had been fully administered, with the exception of a sum of about £100. It was submitted that all the costs ought to come out of the fund in question. On the other hand, the *Solicitor-General* insisted that the rule was, that although whatever remained unadministered might be applied in payment of the costs, because the expense of constructing a testator's will was part of the administration, yet where there was no unadministered estate, a fund could not be recalled for the purpose of paying costs.

The *Lord Chancellor* admitted the general rule to be as stated by the *Solicitor-General*, and, observing that the case was clearly one where, for the sake of all parties, a difficulty had to be removed, directed that out of the residue the trustees should have their full costs first, and then that anything which remained should go, not in the first instance to the appellants, but rateably, as far as it would extend to satisfy the costs of both appellants and respondents. *Hinale v. Taylor*, 5 De G. M. & G. 577.

## GRIEVANCES OF COPYHOLDERS.

SEVERAL of our correspondents have often and ably exposed the grievances under which copyholders labour; and though the legislature has afforded some relief, a large amount of evil remains. We must, therefore, continue to reserve a corner of this Journal to record the complaints which still continue in reference to this remnant of the feudal system. We extract the following from the "*Household Words*" of 26th July.

"A few years ago, four acts were passed, each more mysterious than the other, for the enfranchisement of copyholds. These—like many other products of the wisdom of Parliament—have been so hedged about with difficulties and are so unintelligible, that no good can come of them. We are still made to bear with some of the quaint old absurdities of mediæval times and to hold our lands by copy of court-roll; rendering homage to the lord by service of render, user and prender; paying a fine and a heriot on the death of the lord of the manor, and the like on every alienation; after the manner of our ancestors centuries ago. In spite of railways, telegraphs, printing-presses, and of this very periodical itself, we still cling in a few districts to the quaint fashions of the middle ages. We have so far improved certainly that no agricultural Dames of the present day can be robbed of his Phyllis by an insatiate lord; nor can the whole of the tenants be termed 'villeins in gross,' and be sold bodily; but he may be robbed legally nevertheless.

Take heriots as an example. A heriot is the best horned beast; and the lord is entitled—in the manors of which I speak—to one heriot for every tenement occupied by the tenant either upon every conveyance of the property (termed an alienation), upon the death of the tenant, or upon the death of the lord. I could quote an instance of recent occurrence, where, upon the death of a tenant who was in possession of fourteen tenements, the lord seized fourteen of the successor's best milch cows. Nor did the matter end here. On the occurrence of any of the events above mentioned, the lord receives

eight times the ancient rent; and, as this rent amounts in most instances to three or four pounds, it was found that the heir to the unfortunate owner of the fourteen tenements, would be required to pay some four hundred and fifty pounds for rent; and this after the disappearance of his milch cows.

"Then there is attending the Lord's Court, and doing homage—not exactly 'openly and humbly kneeling, being ungirt, uncovered, and holding up the hands both together between those of the lord, &c.'—but by wasting a long day at a dirty country inn. There are, moreover the customs, established by our ancestors and still daily practised, of which I will mention only service days. Besides money payments, the tenant is obliged to give up mow-days, due-days, plough-days, and catch-days; in virtue of which he is required to mow the lord's land, reap it in time of harvest, and carry the corn to the nearest mill to grind, so many times a year.

"I make no mention of the inconvenience to land owners who have a small plot of copyhold property (as is often the case) intermixed with their freehold, and which necessarily increases the expense of transfer; nor do I adduce one half of the evils attendant upon copyhold tenure. I would merely assume in conclusion that if these feudal customs were highly politic, and very necessary (as they may have been) in the stormy days of our ancestors when lord and vassal were glad to band together for mutual support, that now they can safely be dispensed with; for, it is difficult to imagine Smith, the lord of the manor of Clodhopples—who reads the Mark Lane Express, makes turnip lanterns for the baby, and behaves in other respects as a peaceable agriculturist—interrupted in these pursuits by the appearance of Jones, the neighbouring lord of the manor of Clodipole, at the head of his vassals, buff-jerkins, hauberks, 'et tout complet,' the said Jones bent upon a raid on the quiet Smith's cattle, and the forcible abduction of his cook.

"Do not let us boast of our high state of civilization, until the best friends of the British Constitution have successfully abolished suit and service holdings, with many more of its existing absurdities."

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

The Queen has been pleased to appoint *Alexander Heslop*, Esq., Barrister at Law, to be a member of the Privy Council of the Island of *Jamaica*.

Her Majesty has also been pleased to appoint *Lewis Morris Wilkins*, Esq., to be a Puisne Judge of the supreme court, and *Adams G. Archibald*, Esq., to be Solicitor-General for the province of *Nova Scotia*.

Her Majesty has been further pleased to appoint *James John Hickson*, Esq., to be Crown Solicitor for the Island of *Hong Kong*; *William Gillespie Dickson*, Esq., to be Procureur and Advocate General for the Island of *Mauritius*; and *William Snagg*, Esq., to be Chief Justice of the Islands of *Antigua* and *Montserrat*.

*Mr. Wm. Johnson*, Solicitor, of Marple, has been appointed Coroner of the Stocleport and Ryde divisions of Cheshire.

### REVISION OF VOTERS.

The revision of the lists of voters for the City of Westminster will take place before *J. F. Macqueen*, Esq., at the Lords Justices Court, Westminster Hall, commencing Thursday the 9th day of October, at 11 o'clock.

### IRISH LUNACY COMMISSION.

The Queen has been pleased to direct Letters Patent to be passed under the great seal, appointing *Sir Thomas Nicholas Redington*, K. C. B.; *Robert Andrews*, Esq., one of her Majesty's Counsel; *Robert Wilfred Skeffington Lutwidge*, Esq., Barrister at Law; *James Wilkes*, Esq., and *Dominick John Corrigan*, Esq., M. D., to be her Majesty's Commissioners, for the purpose of enquiring into the state of the Lunatic Asylums and other institutions for the custody and treatment of the insane now existing in Ireland, and also into the present state of the law, respecting lunatics and Lunatic Asylums in that part of the said United Kingdom. From the *London Gazette* of 30th September.

## ANALYTICAL DIGEST OF CASES.

### SELECTED AND CLASSIFIED.

#### Appeals in Chancery.

(Concluded from page 376).

##### PARENT AND CHILD.

*Possession by father as next friend—Adverse possession.—Length of time.*—A husband survived his wife, who was one of several equitable tenants in common. He was advised by counsel that he had no title as tenant by the curtesy, his wife never having been in possession, and that if he intended to set up such a title he ought not to sue with his infant daughter in a partition suit, which was then in contemplation. The suit was nevertheless instituted by him as the next friend of the daughter, and in 1830 a decree was obtained. A partition was made under the decree, and the legal estate in the daughter's share conveyed to the use of the father during the infancy of the daughter, in trust for her maintenance, and afterwards to her own use in fee.

The daughter attained twenty-one in 1843, and married in 1847. In 1852 the father filed a bill to be relieved from the trusts, on the ground of mistake, and to have his title as tenant by the curtesy established. *Held*, dismissing with costs an appeal from Vice-Chancellor *Stuart* (reported 1 Smale and G. 590).

1. That length of time and acquiescence, and the marriage of the daughter, although without the father's consent, before the father disputed the title, constituted a sufficient answer to the suit.

2. That the fact of the marriage having taken place on the faith of the daughter's interest being free from any estate by the curtesy, was sufficiently put in issue by statements in the answer to the effect that up to the marriage the father always told the daughter that the moneys which he paid her were the balance of the rents after deducting the expenses of her maintenance, and that the land was her

property, and never made any claim of right to them on his part.—*Stone v. Godfrey*, 5 De G. M'N. and G. 76.

Cases cited in the judgment: *Money v. Jordan*, 15 Beav. 373; 2 De G. M'N. and G. 318; *Cholmondeley v. Clinton*, 4 Bill 35.

## PARTIES.

See *Interpleader*.

## PARTNERSHIP.

See *Principal and surety*.

## PER STIRPES.

See *Will*, 8.

## PLEADING.

*Effect of prayer for general relief*.—The prayer for general relief is not available for the purpose of obtaining a decree at variance with the case made by the statements of the bill.—*Hill v. Great Northern Railway Company*, 5 De G. M'N. and G. 66.

And see *Tenant for life*.

## PRESUMPTION.

See *Tenant for life*.

## PRINCIPAL AND SURETY.

*Bond of indemnity in respect of partnership—Discharge*.—Two bankers carried on business under articles of partnership, providing that if at the end of five years, for which the partnership was to continue, either partner should wish to carry on the business, and should not take the share of the other at a valuation, the assets should be realized, the debts paid and the surplus divided. Simultaneously with the execution of the articles a surety for one of the partners entered into a bond to indemnify the other against all loss in respect of the partnership. The business of the bank was continued by the firm for more than a year after the expiration of the five years. *Held*, on appeal from Vice-Chancellor *Kindersley*, reported 2 Drury, 102,

1. That by this continuation the surety was discharged;

2. That whether that circumstance would afford a defence to an action on the bond or not, a court of equity would restrain the obligee from proceeding in such an action.—*Small v. Currie*, 5 De G. M'N. and G. 141.

## PRIVITY.

See *Vendor and purchaser*, 5.

## PRO CONFESSO.

*Dispensing with service on defendant of copy decree*.—Motion to dispense with service on a defendant of a copy of a decree on a bill taken *pro confesso* before the lapse of three years refused.—*James v. Rice*, 5 De G. M'N. and G. 461.

Case cited in the judgment: *Vaughan v. Rogers*, 11 Beav. 165.

## PROVISIONAL ASSIGNEES.

See *Interpleader*.

## PUBLIC COMPANY.

*Deed of settlement not according with subscription contract—Injunction*.—The subscription contract of a projected banking company, after reciting that the capital was agreed to consist of £1,000,000, with

power to increase it to £3,000,000, and that application had been made to the crown for a charter, nominated certain persons directors until the charter should be obtained, with power for them to arrange the terms of the charter in such manner as they should think necessary, in compliance with the requisition of the Government, and to narrow or extend the objects of the company as might be necessary. When the charter should have been sealed, the directors were empowered to prepare a deed of settlement and to call for a first instalment from the subscribers, and to declare a forfeiture of the shares of any subscribers who did not execute such deed of settlement. A charter was obtained incorporating the company, with a capital of £644,000, and power to increase it to £1,000,000, with the consent of the Lords of the Treasury. A call was made, and a deed of settlement prepared, reciting the charter, the call, and its payment by the parties to the deed of settlement: *Held*, varying the decision of the *Master of the Rolls*, 19 Beav. 278—

1. That the power of the directors was not terminated on the grant of the charter.

2. That the charter was not inconsistent with the subscription contract.

3. That the call was properly made.

4. That the deed of settlement was binding on the subscribers to the subscription contract; but

5. That as the deed of settlement made the payment of the call a requisite preliminary, and the subscription contract did not make non-payment of the call a ground for forfeiture, the directors could not declare a forfeiture for non-execution of the deed of settlement. *Norman v. Mitchell*, 5 De G. M'N. and G. 648.

Cases cited in the judgment: *Young v. Esircock*, 7 C. B. 310; *Stronghill v. Buck*, 14 Q. B. 781.

## RAILWAY.

See *Specific performance*, 1; *Vendor and purchaser*, 5.

## RENEWED LEASE.

See *Legatee*.

## RENT.

See *Specific performance*, 2.

## RESIDUARY LEGATEE.

See *Limitations, statute of*.

## SALE, POWER OF.

See *Will*, 8.

## SCOTCH DOMICILE.

See *Husband and wife*.

## SERVICE OF DECREE.

See *Pro confesso*.

## SETTLEMENT.

See *Marriage articles*.

## SHIP.

*Freight—Right of mortgagee*.—A part owner of a ship, whose share was subject to a mortgage, agreed with the other part owner (whose share was not subject to any mortgage), but without the concurrence of the mortgagee, to purchase guano on the joint account of the two part owners, and bring it in the ship to England. On the completion of the voyage, and when the cargo was about to be discharged, the mortgagee took possession: *Held*, affirm-

ing the decision of the *Master of the Rolls*, reported 18 Beav. 80, that he had no claim against the owner of the unmortgaged share for freight, and could, at the utmost, only claim to adopt the mortgagor's contract, and to stand in his place as to the profits of the adventure, after deducting all expenses. *Alexander v. Simons*, 5 De G., M'N., and G. 57.

Case cited in the judgment: *Green v. Briggs*, 6 Hare, 395.

## SPECIFIC LEGATEE.

See *Legatee*.

## SPECIFIC PERFORMANCE.

1. *Of contract by railway—Security—Annuity on land taken.*—A bill filed against a railway company by the grantee of an annuity charged on land taken by the company stated, that, before the grant of the annuity, the land was subject to a mortgage in fee, which had since been paid off, but that there had been no reconveyance; that the defendants under the powers of their act had given the plaintiff notice to treat for the land charged with the annuity, but without any further proceeding had taken possession of the land. The prayer was, that the company might be decreed to pay the arrears of the annuity, and to secure the future payment of it. The defence made by the answer and evidence was, that the company had purchased from the prior incumbrancer under a power of sale: Held, reversing the decision of Vice-Chancellor Kindersley, that the plaintiff could not on such pleadings enforce a specific performance of the notice to treat regarded as a contract to purchase the plaintiff's interest.—*Hill v. Great Northern Railway*, 5 De G. M'N. and G. 66.

2. *Agreement for lease after expiration of term—Recovery of rent as equitable debt—Winding-up acts.*—In pursuance of an arrangement made on behalf of a joint stock company, with certain persons to purchase the beneficial interest in a colliery lease agreed to be granted to them for a term of forty years, a lease was granted in March, 1842, to three persons as trustees for the company for a period of forty years, at a fixed rent, together with a royalty. The lease contained a stipulation enabling the lessees, at the end of any period of three years from its commencement, to determine the lease by giving twelve months' notice. The company entered into possession in December, 1841, and remained in such possession till November, 1842, when the working proving unprofitable was abandoned and never afterwards resumed. In January, 1850, the company was dissolved, and its affairs ordered to be wound up under the provisions of the Joint Stock Companies Winding-up Acts. The lessor became bankrupt in August, 1858. Some time prior to his bankruptcy his interest in the mine became vested in the plaintiff. In May, 1852, the official manager of the company, under protest that the lease was not binding on the company, gave notice to terminate the lease on the 31st of May following, when one of the triennial periods expired. On the 23rd of February, 1853, the plaintiff filed his bill against the official manager of the company, praying a declaration that the company had accepted the lease and were bound thereby, and that the official manager might be ordered to pay the arrears of the stipulated rent since March, 1842, together with compensation for all breaches of covenant: Held, dismissing with costs an appeal from Vice-Chancellor Wood, that no relief in the nature of specific performance, nor any equitable relief, could be granted either against the persons to whom the

demise was made or against the company in respect of their occupation, the rights of the plaintiff, if any, being legal.

The case of *Clavering v. Westley*, 3 P. Wms. 402, so far as it might be an authority for the recovery of rent as an equitable debt, disapproved.—*Walters v. Northern Coal Mining Company*, 5 De G. M'N. and G. 629.

Case cited in the judgment: *Nesbitt v. Meyer*, 1 Swanst. 223.

And see *Vendor and purchaser*, 2, 5.

## STAMP.

See *Assignment*.

## STATUTE OF DISTRIBUTIONS.

See *Will*, 7.

## STATUTE OF FRAUDS.

See *Frauds, statute of*.

## STATUTE OF FRAUDULENT DEVICES.

See *Tenant for life*.

## STATUTE OF LIMITATIONS.

See *Limitations, statute of*.

## SUBSCRIPTION CONTRACT.

See *Public company*.

## TENANT FOR LIFE.

*Discharging bond debts—Presumption—Statute of Limitations—Pleading—Statute of Fraudulent Devices—Affidavit.*—A tenant for life discharging an incumbrance upon the estate is presumed to have intended to keep the charge alive against the inheritance for his own benefit, and the absence of an assignment will not conclude him; but a similar presumption does not arise from the payment by a tenant for life of bond debts, which, even if assigned, only place him in the same position as any other bond creditor.

A testator, being indebted by bond, devised certain real estate to his son for life with remainder, subject to a term for the payment of legacies, to his grandson in tail, and died. Upwards of twenty years after the date of the latest of the bonds, the tenant for life and his assignee for value filed their bill against the tenant in tail and the legatees, alleging that the tenant for life had paid off the bonds, and seeking to stand in the shoes of the obligees as against the inheritance. The tenant in tail pleaded the Statute of Limitations; the other legatees did not: Held, dismissing, with costs, an appeal from V. C. Stuart, that the payment of the bonds by the tenant for life did not constitute him an incumbrancer on the estate, and that the bonds themselves, being more than twenty years old, the presumption was that they had been satisfied.

*Semble*, the plea of the Statute of Limitations, under the circumstances, by the tenant in tail, enured for the benefit of all the defendants.

In June, 1854, the tenant for life made an affidavit, verifying payment of the bonds, and died in August following. A supplemental suit was instituted by the surviving plaintiff, who, in February, 1855, filed the affidavit in the original and supplemental suits: the Lord Chancellor, in the absence of any motive attributable to the plaintiff for not having filed the affidavit in the interval between the dates of its being sworn and the death of the deponent, received it with the qualification that less credit would be given to it than to any evidence which might be adduced by the

other side to rebut it, there being no opportunity of cross-examining the deponent. *Morley v. Morley; Harland v. Morley*, 5 De G., M'N., and G. 610.

## TRUST.

See *Will*, 9.

## TRUSTEE.

1. *Possession by, not adverse to cestui que trust.*—Possession obtained in the character of trustee cannot be retained as one adverse to the cestui que trust, after the legal estate under which the possession was taken has determined. *Stone v. Godfrey*, 5 De G., M'N., and G. 76.

2. *Breach of trust—Acquiescence by cestuis que trustent.*—A testator by his will gave the residue of his property to three trustees, whom he appointed executors, upon trust to sell, and invest the same, and to pay the income thereof to his widow for life, and after her decease to his children, who were all infants at the time of his death. The eldest child attained twenty-one in the year 1839, and the youngest in 1846. The three executors proved the will, but one of them almost exclusively acted. The money, which was the proceeds of the estate, was suffered by two of the executors to remain in the hands of the third, who ultimately became insolvent. On the youngest child attaining twenty-one, he, on behalf of himself and his brothers and sisters, attempted to obtain payment from the acting executor, and in 1848 wrote him a letter consenting to receive payment of the amount then admitted to be due, by annual instalments. In 1849, and shortly before the insolvency of the acting trustee, a bill was filed by all the children against the three trustees, for the purpose of making them each responsible: *Held*, by the Lord Chancellor, varying the decision of V. C. Wood, that inasmuch as it was the duty of the three trustees to have explained to their cestuis que trustent what their rights were, and as they had not done so, there was nothing in the conduct of the children to deprive them of their remedy against the three trustees, who were accordingly declared to be jointly and severally liable to make good the deficiency. *Burrows v. Walls*, 5 De G., M'N., and G. 233.

Case cited in the judgment: *Walker v. Symonds*, Swanst. 1.

3. *Claim paramount the trust—Evidence.*—An executrix, by a deed, reciting that she intended to appropriate a part of her testator's assets in payment of a debt due from him to her, declared trusts of the fund intended to be thus appropriated. She died without making the appropriation, which was made after her decease by her executors. New trustees of the deed, subsequently appointed, executed a declaration of trust (contained in the deed appointing them), whereby they declared that they would hold the fund upon the trusts. On their inquiring before their appointment for evidence in verification of the recital as to the existence of the debt from the testator to the executrix none could be discovered: *Held* by Lord Justice Turner, agreeing with Vice-Chancellor Wood (dissentiente Lord Justice Knight Bruce), that the trustees could not be compelled to execute these trusts without further evidence of the settlor's title to appropriate the fund.—*Neale v. Davies*, 5 De G. M'N. and G. 258.

## USURY.

See *Equitable mortgage*.

## VENDOR AND PURCHASER.

1. *Injunction—Covenant binding alienee—Laches—Liquidated damages*—On an agreement to sell part

of a vendor's land, the vendor and purchaser entered into mutual covenants prohibiting building, except in a specified manner, on the sold and unsold parts, with a stipulation for payment of liquidated damages in case of breach of covenant: *Held*, by the Lords Justices, confirming the decision of V. C. Wood, reported 1 Kay, 75:—

1. That a subsequent owner of the unsold part claiming through the grantor by means of deeds, one of which referred to the deed containing the prohibitory clause, but not to that clause, was bound by the prohibition in equity,

2. That the circumstance of the grantor not having performed a covenant, to obtain for the grantee a direct covenant from the former purchaser, did not constitute a defence, it not appearing that any application had been made to the grantor for that purpose.

3. That notice of a right to prevent building, and of an intention to enforce it, given before any expense was incurred, followed by a bill for an injunction, though not filed for four months afterwards, was insufficient to exclude a defence on the ground of laches, it appearing that the plaintiff could not so soon establish his right to enforce the prohibition.

4. That the clause as to liquidated damages did not exclude the interference of the court by interlocutory injunction. *Coles v. Sims*, 5 De G., M'N. and G. 1.

Case cited in the judgment: *Tulk v. Moxhay*, 11 Beav. 571; 2 Phill. 774.

2. *Specific performance—Restrictive stipulation—Annuity.*—By an agreement for the sale of a reversionary estate in fee, it was stipulated, that a statement in a deed of 1836, to the effect that a life annuity granted to A. B. had not been paid or claimed for eight years (supported by a declaration of the vendor that no claim had been made upon him since 1841, and that he believed the annuity had not been claimed for the last twenty years) should be conclusive evidence that the annuity had determined. It appeared that the annuity was granted by a person entitled in reversion, and was granted for the life of the survivor of four persons, two at least of whom were living: *Held*, confirming the decision of Vice-Chancellor Stuart, 2 Smale and G. 225, that the omission to state these circumstances disentitled the vendor to enforce the stipulation in a specific performance suit instituted by him.—*Drydale v. Mace*, 5 De G. M'N. and G. 103.

Case cited in the judgment: *Cox v. Dolman*, 2 De G. M'N. and G. 592.

3. *Misrepresentation of value—Mine—Diligence.*—Misrepresentations to constitute sufficient grounds for setting aside a purchase, must be material, as being of such a nature as, if true, to add to the value, must not be evidently merely conjectural statements, and must be made without a belief in their truth or without reasonable ground for such a belief.

Where advertisements for the sale of shares in a mine had been issued containing unfounded statements, but the purchaser had not relied upon them, and had had opportunities of judging of their accuracy: *Held*, confirming the decision of the *Master of the Rolls*, 17 Beav. 234, that he was not entitled by reason of them to have the contract rescinded.

In suits to rescind contracts for fraud, particularly where the subject is of variable value, it is the duty of the plaintiff to put forward his complaint at the earliest possible period.—*Jennings v. Broughton*, 5 De G. M'N. and G. 126.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, OCTOBER 11, 1856.

### NOTES ON RECENT STATUTES.

#### I. BANKERS' DRAFTS. II. INTESTATE'S ESTATES. III. EVIDENCE IN FOREIGN SUITS.

SOME Notes on the Statutes of the last session of Parliament which materially alter the law and the practice of the courts, and in which the members of the profession are peculiarly interested, have been already submitted to our readers—namely, on the Settled Estates Act, p. 265; the County Courts Act, p. 345; the Mercantile Law Act, p. 361; and the Stamp Duties Act, p. 297. We now proceed to notice briefly some other statutes, though possessing a less degree of importance than the others.

##### I. BANKERS' DRAFTS ACT. (19 & 20 Vic. c. 25).\*

It will be recollected that before this act passed it was held that a draft on a banker payable to A. B., or *bearer*, could not be refused payment to any one who presented it because it was crossed with a banker's name. It was of the very nature of an unstamped draft payable to the bearer that it should be receivable by any one who presented it unless the banker had reasonable grounds for concluding that it was fraudulently obtained.

The act recites that doubts have arisen as to the obligations of bankers with respect to cross-written drafts, and that it would conduce to "the ease of commerce, the security of property, and the prevention of crime," if drawers or holders of drafts payable to order, or to order on demand, were enabled effectually "to direct the payment to be made only through a banker."

It is therefore enacted that where a draft on any banker made payable to bearer or to order on demand "bears across its face an addition in *written or stamped letters* of the name of any banker, or of the words "*and company*," in full or *abbreviated*, either of such additions shall have the force of a direction to the bankers upon whom such draft is made, that the same is to be *paid only to or through some banker*, and the same shall be payable only to or through *some banker*."<sup>†</sup>

It may be presumed, therefore, that if the

drawer should write across the draft "Bank of England," or "Union Bank," or the name of any private or other banker, the holder of the draft may strike it out, and write the name of *some other banker*. This, in the words of the preamble, may "conduce to the ease of commerce;" for the holder may desire to transfer the draft to another person, who may have a different banker; or the banker's name may be written in mistake by the drawer, and trouble may be saved by the liberty of passing the draft through any banker's hands. It is not very improbable, however, if a draft should be misappropriated, that the question may be mooted whether the banker is justified in paying the amount to any other banker than the one written across by the drawer, for it may be the object of the drawer that the money should be credited in the drawee's account with the banker actually specified.

##### II. ADMINISTRATION OF INTESTATES' ESTATES. 19 & 20 Vict. c. 94.\*

It being deemed expedient that one uniform rule should prevail throughout England and Wales concerning the distribution of the *personal estate* of persons dying intestate, the present act, after the 31st December, 1856, repeals the 4th section of 22 & 23 Car. 2, c. 10, "for the better Settling of Intestates' Estates," and so much of the 18th section of 11 Geo. 1, c. 18, "for Regulating Elections in the City of London," as preserves the custom of London in the case of persons dying intestate, *save* only with respect to the distribution of the personal estate of persons who may have died before the 31st of December next.

It is then enacted that the special customs concerning the distribution of the personal estates of intestates observed in the City of London, or in relation to the citizens and freemen of such City, and in the province of York and certain *other places*,<sup>†</sup> with reference to all persons dying on or after 1st January, 1857, shall wholly cease; and the distribution of their personal estate shall take place as if such customs had never existed, and as if the rules in the province of *Canterbury* had prevailed throughout England and Wales.

\* See the Act verbatim, p. 154, *ante*.

† "Banker" includes corporations, joint-stock companies, or other companies acting as bankers.

\* See the act, p. 229.

† The "other places" are not named in the act.



## III. EVIDENCE BEFORE FOREIGN TRIBUNALS.

19 &amp; 20 Vict. c. 113.\*

The object of this act is to afford facilities for taking evidence in her Majesty's dominions in relation to *civil* and *commercial* matters pending before foreign tribunals.

The courts to which jurisdiction is given by the act are the Superior Courts of Common Law at Westminster and Dublin, the Court of Session in Scotland, and any supreme court in any of her Majesty's colonies or possessions abroad, or any judge of any such court; *provided* the Lord Chancellor, with the assistance of two of the judges of the Courts of Common Law at Westminster, shall frame rules and orders for giving effect to the act and regulating the procedure (s. 6).†

On its being made to appear to any court or judge having authority under the act, that any court or tribunal of competent jurisdiction in a foreign country, before which any *civil* or *commercial* matter is pending, is desirous of obtaining the testimony of any witness, the court or judge may order the examination upon oath, on interrogatories or otherwise, before any person named in the order, and command the attendance of any person (within the jurisdiction) to be examined, and produce writings or documents; and such order may be enforced like any other order of court (s. 1).

A certificate of the ambassador or other diplomatic agent or consul of any foreign power shall be evidence of the matters required to support the application (s. 2).

The examination of witnesses is to be taken on oath; persons giving false evidence to be deemed guilty of perjury (s. 3). And it is provided that the witnesses be paid their expenses and loss of time as upon attendance at a trial (s. 4).

Provided that persons so required to be examined may refuse to answer questions tending to criminate themselves, or other questions which a witness in a cause pending in a court here would be entitled to refuse answering; and no person shall be compelled to produce documents that would not be required at a trial (s. 5).

The rules of court, we presume, will set forth the form or substance of the certificate which will be required from the ambassador, diplomatic agent, or consul of the foreign country where the litigation is in progress, in order to bring the matter under the cognizance of the court or judge, either here or elsewhere in the British dominions; and it may be required that the application be supported by proper affidavits, verifying the papers from "the foreign court of competent jurisdiction," and shewing that it is "desirous of obtaining the testimony." We presume, also, that a

commission or some judicial document will be issued by the tribunal before which the matter is pending, directed to certain commissioners, authorising them to take the testimony of the witnesses and prescribing the mode of authenticating and returning the depositions, according to the practice of the court in which they are to be produced. The act, in fact, enables the court or judge in England, Ireland, Scotland, and the Colonies, to authorise the examination, and compel the attendance of witnesses; but the foreign tribunal will, no doubt, direct the course of proceeding consistently with its own practice.

We trust that our Allies will follow the same course, in compelling the attendance of witnesses abroad to be examined for purposes of justice in this country. It will be observed that the act applies only to *civil* and *commercial*, not criminal, proceedings.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

## FORMATION OF NEW PARISHES ACT.

19 &amp; 20 Vict. c. 104.

1. Power to constitute new districts under recited acts.
2. District containing a church to become a new parish on being constituted a separate district by order in council.
3. District may be constituted without providing endowment as required by sect. 9 of 6 & 7 Vict. c. 37.
4. Section 22 of 6 & 7 Vict. c. 37, to apply to ecclesiastical and collegiate corporations.
5. Right to pews in the old parish church not to be retained after occupation of sittings in the new.
6. Pew rents may be taken according to scale, and applied towards repair of church and providing endowment.
7. Upon permanent endowment of any church or chapel a proportionate number of sittings to be declared free, or scale of pew rents to be reduced.
8. Scale of pew rents may be altered.
9. Clerk and sexton to be appointed by incumbent.
10. Freeholds of titles of churches and burial grounds to vest in incumbents.
11. Offices of the church to be performed in all churches or chapels, on application of the incumbent.
12. Reserved fees to belong to original incumbent until first avoidance, then to the incumbent of new parish.
13. Provisions of 19th section of 6 & 7 Vict. c. 37, extended.
14. Districts may become separate and distinct parishes.

\* See the act, p. 334, ante.

† It would seem from this proviso that nothing can be done under the act till the rules and orders have been made.

15. Incumbents of new parishes to have exclusive cure of souls therein.
16. Provisions contained in section 20 of 6 & 7 Vict. c. 37, extended.
17. Patronage may be conferred upon contributors to endowment or their nominees, upon certain considerations.
18. Assignment of patronage to be made with certain consents.
19. Notices to be sent to patrons.
20. Who to be deemed patrons.
21. Patronage not to be sold; penalty of lapse for so doing.
22. Patronage may be vested in certain cases in incumbent of original parish.
23. Land, tithes, &c., and other endowments to vest in incumbent and his successors.
24. Appointment of trustees, &c.
25. Parishes may be divided, with certain consents.
26. In new parishes and parishes already divided, a division and resettlement of endowments may be made.
27. As to providing houses of residence for spiritual persons serving any church or chapel.
28. Churchwardens to be paid compensation for rights of common.
29. Nothing to affect provisions of 18 & 14 Vict. c. 41, &c.
30. Powers of 3 & 4 Vict. c. 113, and 4 & 5 Vict. c. 39, extended to this act.
31. Commissioners may apportion endowment.
32. For purposes of burial, parishes to be ecclesiastical districts.
33. Interpretation of certain terms.
34. Extent of act.
35. Short titles of act.

The following are the title, preamble, and sections of the act :—

An Act to extend the Provisions of an Act of the Sixth and Seventh Years of Her Majesty, for making better Provision for the Spiritual Care of populous Parishes, and further to provide for the Formation and Endowment of separate and distinct Parishes. [29th July, 1856.]

WHEREAS it is expedient to afford increased facilities for the subdivision of populous districts, and for the formation thereof of separate and distinct parishes for all ecclesiastical purposes, and also to make better provision for the endowment and augmentation of poor livings in England and Wales; and whereas by an act passed in the sixth and seventh years of her Majesty, chapter thirty-seven, and by another act passed in the seventh and eighth years of her Majesty, chapter ninety-four, the ecclesiastical commissioners for England are empowered, in the case of parishes, chapelries, and districts of great extent and containing a large population, to constitute any part or parts thereof a separate district for spiritual purposes, such district not at the time of so constituting the same containing within its limits any consecrated church or chapel, and it is expedient that the provisions of the said act relative thereto, and to the matter and things consequent

thereon, should be extended and amended in manner following: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: That

1. It shall be lawful to constitute districts under the provisions of the said act, notwithstanding that there may be within the limits of any such district a consecrated church or chapel, any local act to the contrary notwithstanding.

2. It shall be lawful for the commissioners, in the scheme for constituting any district, to specify some existing or intended church within the district as the parish church of such district, and immediately upon the issuing of the order of her Majesty in council ratifying such scheme such district shall become and be a new parish, and such church, when consecrated, the church thereof, and the incumbent of such church the incumbent thereof, in the same manner, and to the same extent, to all intents and purposes, as is contemplated with respect to new parishes formed under the said acts, and to the churches and incumbents thereof respectively; and the incumbent of such church shall be liable to the performance of all pastoral duties within the limits of such new parish.

3. It shall be lawful to recommend the constitution of such district without providing in the scheme for the same the permanent endowment required by the ninth section of the first-recited act, if it shall appear to the commissioners, and shall be declared in the said scheme, that there is reason to expect from other sources an adequate maintenance for the incumbent.

4. The powers and provisions contained in the twenty-second section of the said first-recited act, enabling any person or body corporate to give and grant lands, tithes, tenements, or other hereditaments, goods, or chattels, for the purposes of the said act, shall be construed and held to authorise any ecclesiastical or collegiate corporation, aggregate or sole, to give or grant any lands, tithes, tenements, or other hereditaments, goods, or chattels, belonging to such corporation, in such manner as in the said firstly and secondly recited acts mentioned, for the purposes of the said recited acts or of this act: Provided always, that the said powers shall not be exercised by the incumbent of any benefice with cure of souls without the consent of the patron of such benefice.

5. Every person resident within the limits of any new parish or district already formed under any of the church building acts, or hereafter to be formed under the provisions of the said acts of the sixth and seventh years of her Majesty, chapter thirty-seven, and the seventh and eighth years of her Majesty, chapter ninety-four, or of this act, who shall have claimed and have had assigned to him sittings in the church of such new parish, shall thereby surrender, as to any right that he may have possessed, an equal number of sittings in the church of the original parish or other ecclesiastical district out of which such parish shall have been taken, unless such last-mentioned sittings be held by faculty or under an act of Parliament.

6. It shall be lawful for the commissioners, if it shall appear to them that sufficient funds cannot be provided from other sources, but not otherwise, with the consent of the bishop of the diocese under his hand, to order and declare by an instrument in writing under their common seal that annual rents may be reserved and taken in respect of any pews or

sittings in any church to or for which a district may hereafter be assigned under the provisions of the said recited acts or of this act, and such rents shall be charged, levied, and taken by the churchwardens for the time being of such church after a rate or scale which shall be specified in such instrument, and the proceeds not otherwise appropriated by law shall be applied towards the repair and maintenance of the same church, and the maintenance of the minister and the services thereof, and the endowment of such church, in such manner as shall be specified in such instrument, and to no other uses: Provided always, that one half part at least of the whole number of pews or sittings in such church shall be free sittings, and that it shall be shown to the satisfaction of the said commissioners that the said free sittings will, with respect to position and convenience, be as advantageously situated as those for which a rent may be fixed and reserved.

7. Upon a permanent endowment being provided for any church in which pew rents have previously been authorised to be taken, and upon such endowment being approved by the commissioners, they may thereupon, under such an instrument under their common seal as is hereinbefore mentioned, with the consent of the bishop of the diocese, make an equivalent reduction in the total amount of the rents authorised to be taken for the pews or sittings in such church, if the same shall not be appropriated by law for specific purposes, either by a reduction of the rate or scale, or by declaring certain specific pews or sittings theretofore chargeable with the rents to be absolutely free: Provided always, that if any sum or sums of money have been borrowed under the authority of any act of Parliament or order in council upon the security of pew rents such instrument shall not take effect until after the repayment of all sums so charged or chargeable.

8. It shall be lawful for the said commissioners, with the like consent of the bishop, from time to time, or at any time, to rescind the whole or any part of the provisions contained in any instrument such as aforesaid which may be in force; but no alteration affecting the emoluments of the incumbent of any church shall take effect until the next avoidance of the benefice, unless with his consent in writing.

9. The parish clerk and sexton of the church of any parish constituted under the said recited acts or this act shall and may be appointed by the incumbent for the time being of such church, and he by him removable, with the consent of the bishop of the diocese, for any misconduct.

10. The freehold of the site of the church of any new parish created under this act or the said firstly and secondly recited acts, and of the churchyard, burial ground, and vaults belonging thereto, with the rights, members, and appurtenances thereof, but in case the same shall be vested in any vestry by any local act of Parliament, then not without the consent of such vestry, and the house of residence, with the appurtenances thereof, and all the lands, tithes, tenements, hereditaments, and other endowments belonging to such church, or held by or vested in any person or body corporate in trust exclusively for or for the exclusive benefit of the incumbent of such church, shall become and be vested in such incumbent and his successors for ever, and be held and enjoyed by him and them in right of such incumbency; and all lands, tenements, or hereditaments granted or conveyed for the site of any

church, and upon which any church shall be built, or for a burial ground, shall from and after the consecration of such church and burial ground respectively remain and be freed from and discharged of all the estate, right, title, interest, claim, and demand of any person, body politic or corporate whatsoever, unto or out of the same or any part thereof respectively, subject, nevertheless to any rent that may be reserved thereout, and to the covenants and conditions subject to which the same may have been granted or conveyed.

11. From and after the commencement of this act the commissioners may, if they shall think fit, upon application of the incumbent of any church or chapel to which a district shall belong, with the consent in writing of the bishop of the diocese, make an order, under their common seal, authorising the publication of banns of matrimony and the solemnisation therein of marriages, baptisms, churchings, and burials, according to the laws and canons now in force in this realm; and all the fees payable for the performance of such offices, as well as all the mortuary and other ecclesiastical fees, dues, oblations, or offerings arising within the limits of such district, shall be payable and be paid to the incumbent of such district.

12. In every case in which all or any part of the fees or other ecclesiastical dues arising within the limits of any district; or payable in respect of marriages, baptisms, churchings, and burials in the church or chapel thereof, or of such fees as are hereby made payable to the incumbent of any district, shall have been reserved, or if such last-mentioned order had not been made would of right belong to the incumbent of the original parish, district, or place out of which the district of such church or chapel shall have been taken, or to the clerk thereof, an account of such fees shall be kept by the incumbent of such church or chapel, who is hereby required to receive and every three months pay over the same to the incumbent and clerk respectively who would have been entitled to them in case such districts had not been formed; and from and after the next avoidance of such incumbency, or the relinquishment of such fees by such incumbent, and after the situation of such clerk shall have become vacant, or after a compensation in lieu of fees has been awarded to such clerk by the bishop of the diocese, which he is hereby empowered to do, such reservation shall altogether cease and determine; and all such fees and dues shall belong to the incumbent of the district within which the same shall arise, or to the clerk of the church thereof.

13. The provisions contained in the nineteenth section of the sixth and seventh Victoria, chapter thirty-seven, relating to compensation to be given as therein mentioned, shall be applicable to and may be exercised by the commissioners in like manner with respect to persons affected by the provisions of this act.

14. Whosoever or as soon as banns of matrimony and the solemnization of marriages, churchings, and baptisms according to the laws and canons in force in this realm are authorised to be published and performed in any consecrated church or chapel to which a district shall belong, such district not being at the time of the passing of this act a separate and distinct parish for ecclesiastical purposes, and the incumbent of which is by such authority entitled for his own benefit to the entire fees arising from the performance of such offices without any reservation thereout, such district or place shall become and be a separate and

distinct parish for ecclesiastical purposes, such as is contemplated in the fifteenth section of the first-recited act, and the church or chapel of such district shall be the church of such parish, and all and singular the provisions of the said firstly and secondly recited acts (as amended by this act) relative to new parishes, upon their becoming such, and to the matters and things consequent thereon, shall extend and apply to the said parish and church as fully and effectually as if the same had become a new parish under the provisions of the said last-mentioned acts.

15. The incumbent of every new parish created or hereafter to be created pursuant to the provisions of the said firstly and secondly recited acts or of this act shall, saving the rights of the bishop of the diocese, have sole and exclusive cure of souls and the exclusive right of performing all ecclesiastical offices within the limits of the same, for the resident inhabitants therein, who shall for all ecclesiastical purposes be parishioners thereof, and of no other parish, and such new parish shall, for the like purposes, have and possess all and the same right and privileges, and be affected with such and the same liabilities, as are incident or belong to a distinct and separate parish, and to no other liabilities: provided always, that nothing herein contained shall be taken to affect the legal liabilities of any parish regulated by a local act of Parliament, or the security for any loan of money legally borrowed under any act of Parliament or otherwise.

16. The provisions contained in the twentieth section of the said firstly-recited act respecting the assignment of the right of patronage, either in perpetuity or for one or more nominations, in certain cases, by the authority therein referred to, shall apply to the case of the patronage of any church or chapel to which a district shall belong, and the patronage of which is vested in the incumbent of the original parish, district, or place out of which such aforesaid district shall have been taken, by reason of his being such incumbent, and not of any private right, or of any new parish which shall hereafter be constituted under this act, or of any existing parish or district having neither incumbent nor patron, or of any benefice the patronage of which is vested in the Crown, or in the Chancellor of the Duchy of Lancaster, or in the Duke of Cornwall, or of any benefice the patronage of which is vested in any ecclesiastical or lay corporation, aggregate or sole; provided that the permanent annual endowment of such benefices respectively shall not exceed one hundred pounds per annum, nor the annual income of the same from all sources the sum of two hundred and fifty pounds per annum, such income to be calculated by the said commissioners in the manner provided by the eighth section of an act of the first and second of Victoria, chapter one hundred and six, and when any portion of such income shall arise from pew rents, the value of such portion shall be calculated upon an average of the three years last preceding.

17. It shall not be lawful for the commissioners to assign such patronage as aforesaid in perpetuity for any less consideration than the building a church, as and for the church of such parish, district, or benefice, and providing for the permanent endowment of such church a clear yearly sum of at least forty-five pounds, or the permanently endowing the church or chapel of such parish, district, or benefice with a clear yearly sum of one hundred and fifty pounds: provided always, that the commissioners may, in lieu of such sums, or as part thereof, accept any gift, benefaction, or property which they shall

judge to be suitable in its nature; but provided always, that such gift, benefaction, or property shall, in the judgment of the commissioners, be equivalent to the said sums in each case respectively, or to the part thereof in lieu of which it shall have been accepted.

18. Such assignment shall be made in the following cases, with the following consents only; that is to say, in the case of a benefice in the patronage of the Crown, or the Chancellor of the Duchy of Lancaster for the time being, or of the Duke of Cornwall, or of any archbishop or bishop, or of any lay or ecclesiastical corporation aggregate, with the consent of the patron thereof; and in the case of a benefice in the patronage of an incumbent of any other benefice, with consent of the bishop of the diocese, and also with consent of the patron of such other benefice, if in private patronage, and in the case of any parish or district having neither incumbent nor patron, with the consent of the bishop of the diocese; and such consent shall be testified in manner provided by the one hundred and twenty-sixth and one hundred and twenty-eighth sections of the act of the first and second Victoria, chapter one hundred and six.

19. When the commissioners shall intend to make any such assignment as aforesaid, they shall give notice in writing of such intention to the patron or patrons of such benefices, and to the person or persons whose consents are hereby required, and such notice shall be served in manner provided by the secondly-recited act.

20. The provisions of an act passed in the session holden in the first and second years of her Majesty, chapter one hundred and six, relative to the party or parties who shall be deemed the patron or patrons of the benefices therein mentioned, shall be applicable for the purposes of this act.

21. Whenever the right of patronage of any such before-mentioned benefice with cure of souls shall, pursuant to the foregoing provisions of this act, have become vested in perpetuity in any body or person by reason of such body or person having augmented the endowment of such benefice in such adequate manner as is herein-before mentioned, and whenever such benefice shall, at the time of such transfer of patronage, be already permanently endowed with an annual sum of not less than one hundred pounds, or whenever the annual income of such benefice from all sources shall, when calculated upon an average of the three years immediately preceding such augmentation, amount to one hundred and fifty pounds, no subsequent sale or assignment or other disposition of such patronage by any body or persons whatsoever, shall be made until thirty years next after such transfer, unless the entire proceeds be legally secured to the further permanent augmentation of such benefice, but every such sale, assignment or other disposition of such patronage shall be illegal, and every presentation, collation, admission, institution, or induction thereupon shall be void, and the right of patronage of such benefice shall thereupon for that term lapse to the bishop: provided also, that when the patronage of any church or chapel to which a district shall have been assigned is vested in the incumbent of the original parish, district, or place out of which such district has been taken, the person holding the incumbency of such original parish, district, or place at the time of the passing of this act, shall not be deprived of the patronage of such church or chapel by any assignment of the same during his incumbency, without his consent.

22. Upon the constitution of a new parish under

this act, it shall be lawful for the commissioners, in the meantime and until the conditions of the said acts or of this act relating to the assignment of the patronage of the church of such new parish in consideration of an endowment provided for the same shall have been complied with, and subject to the conditions relating thereto herein contained, to assign such patronage, if they shall see fit, to the then incumbent of the original parish out of which such new parish shall have been taken for the term of his incumbency, and if such parish shall have been formed out of more than one parish, then to one or other of the then incumbents of such parishes for the term of his incumbency, as they shall think fit, anything contained in the twenty-first section of the first-recited act to the contrary notwithstanding.

23. All endowments, of whatever form and character, which shall hereafter be provided for any parish, district, or benefice, and the church or chapel thereof, under the provisions of the said firstly and secondly recited acts or of this act, shall be settled and assured by the body or person providing the same, to the satisfaction of the commissioners, by such deed or deeds and in such manner as the commissioners shall from time to time direct, unto and to the use of the incumbent for the time being of the church or chapel of such parish, district, or benefice, and his successors for ever; and such deeds shall be valid and effectual in law to all intents and purposes, whether such church or chapel shall be vacant or full of an incumbent, and notwithstanding the Statute of Mortmain or any other law or statute whatsoever.

24. Where the commissioners shall make any assignment of patronage in perpetuity, under the said first-recited acts or this act, to the nominees of any body or person or of two or more bodies or persons respectively, such nominees shall be not more than five in number, and shall be the trustees for the exercise of such patronage, and shall be named in the deed of assignment by the said bodies or persons making such endowment or augmentation, or by the major part in value of the subscribers thereto respectively of not less than fifty pounds; and every such nominee shall, upon his appointment, sign a declaration that he is a member of the United Church of England and Ireland; and all vacancies which shall from time to time occur in the number of such trustees, from death, resignation, or inability or refusal to act, shall be filled up in such manner as by the said deed of endowment shall be provided; and it shall happen that all the trustees for the time being shall die without having (in pursuance of any such power in the said deed of endowment) appointed any other trustees or trustee as their successors, or in case any vacancy in the number of such trustees shall not be filled up for the space of two years from the date of such vacancy occurring, then in either case it shall be lawful for the bishop of the diocese to nominate, appoint, or complete the number of trustees by the said deed of assignment required; and every such appointment, whether made in pursuance of the said deed of assignment or by the bishop, shall be valid and effectual for the purpose of conveying the right of nomination; and during any vacancy or vacancies in the office of trustee the remaining or continuing trustees or trustee for the time being shall be capable of acting, as fully and effectually as if such vacancies had been duly filled up.

25. It shall be lawful for the commissioners, by the authority aforesaid, and subject to such consents as are herein-after mentioned, to divide any parish

into two or more distinct and separate parishes for all ecclesiastical purposes whatsoever, and to fix and settle the respective portion of tithes, glebe lands, and other endowments which shall arise, accrue, remain, and be within each of such respective divisions, according as by the like authority shall be deemed advisable; and the order made by her Majesty in Council, ratifying the scheme for such division, shall be good and valid in law for the purpose of effecting the same; and such scheme shall set forth the particular expediency of such division, and how far it may be necessary, in consequence thereof, to make any alteration in ecclesiastical jurisdiction, and how the changes consequent upon such division in respect of patronage, rights of pew holders, and other rights and privileges, glebe lands, tithes, recharges, and other ecclesiastical dues, oblations, offerings, rates, and payments, may be made with justice to all parties interested; and such scheme shall also contain such directions and regulations relative to the duties and character of the incumbents of the respective divisions of such parish, and to the performance of the offices and services of the Church in the respective churches thereof, and to the fees to be taken for the same respectively, and to any other matter or thing which may be necessary or expedient by reason or in consequence of such change: provided always, that such division shall be made in the following cases with the following consents only; that is to say, in the case of a benefice in the patronage of the Crown, or in the Chancellor of the Duchy of Lancaster for the time being, or of the Duke of Cornwall, or of any archbishop or bishop, or of any lay or ecclesiastical corporation aggregate, or of a benefice in private patronage, with the consent of the patrons thereof respectively, with the consent of the bishop of the diocese, such consents to be testified as aforesaid: and provided also, that no such provision shall take effect until after the first avoidance then next ensuing of the church of the parish to be so divided, unless with the consent in writing of the actual incumbent thereof.

26. In cases where any parish shall have been divided into two or more distinct and separate parishes, or where any district or new parish shall have been constituted or formed out of any parish, district, or place, it shall be lawful, by the authority aforesaid, and with the consent of each of the respective patrons and incumbents of such distinct and separate parishes, or of such parish, district, or place, as the case may be, to make a separation and division of the glebe lands, tithes, recharges, and other endowments belonging to such district or separate parishes, or to such parish, district, or place, and to annex and resettle the same to and for the benefit of such distinct and separate parishes, or of such parish, district, or place, and the district or new parish constituted or taken thereout, as the case may be, in such manner and proportions as by the authority aforesaid may be deemed expedient, and to make such regulations and arrangements as may be requisite for effectually completing such division and settlement as aforesaid; and upon every such re-settlement of endowments, whenever the whole of the ecclesiastical dues arising within the limits of any parish, district, or place, consisting of any parial or rectorial tithes shall become and may be made payable to the incumbent of such parish, district, or place, such parish, district, or place shall thereupon become and be a rectory, and such incumbent the rector thereof, anything herein-before contained to the contrary notwithstanding.

27. For the purpose of providing for the incumbent of any church or chapel a convenient house of residence, or for a site thereof, or for a garden or glebe thereto, it shall be lawful for any body or person who shall give, grant, or convey to the ecclesiastical commissioners for England any messuage, lands, tenements, or hereditaments, to give or grant the same, and for the said commissioners to receive the same, subject to such conditions and stipulations, for the purpose of more effectually securing the same to and for the use of such spiritual person aforesaid and his successors for ever, as may be agreed upon between the said commissioners and the body or person so giving or conveying the same.

28. Whereas it is enacted by the thirty-eighth section of the fifty-eighth George the Third, chapter forty-five, that a sum for compensation of rights of common shall be paid to the churchwardens of the respective parishes wherein such commons or waste lands shall lie, and doubts have arisen whether it is compulsory or permissive, on the part of the churchwardens, to receive the same: It is hereby declared, that it shall be compulsory for the churchwardens to accept payment of the said compensation.

29. Nothing herein contained shall be construed to effect or alter the provisions of the Parish of Manchester Division Act, 1850, or to affect or alter any existing or special rights, privileges, or liabilities whatsoever, ecclesiastical or civil, of any parish, district, or place, except as is herein otherwise provided.

30. All the powers and authorities vested in her Majesty in Council and the ecclesiastical commissioners for England by an act of the third and fourth years of her Majesty, chapter 113, and by an act of the fourth and fifth years of her Majesty, chapter thirty-nine, with reference to the matters therein contained, and all other the provisions of the same acts relative to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and shall apply to her Majesty in Council, and to the commissioners, and to all schemes and orders, prepared, made, and issued by them respectively with reference to all matters contained in this act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein, and the said recited acts and this act shall be read and construed as one and the same act.

31. It shall be lawful for the commissioners, with the consent of the bishop of the diocese and of the patron and of the patron and incumbent of the church of any parish, to apportion any sum arising from a permanent endowment belonging to such church, and applicable to the repair and maintenance thereof, to therepair or maintenance of any church or churches situated within the original limits of such parish, anything contained in any local act to the contrary notwithstanding.

32. For the purpose of the acts concerning or regulating the burial of the dead, every parish created under the said recited acts or this act shall be held to be an ecclesiastical district within the meaning of the said acts.

33. In the construction of this act:

The expression "parish, district, or place," shall mean and include any ancient or distinct and separate parish, district, parish, chapelry, district chapelry, consolidated chapelry, or extra-parochial place; and the word "extra-parochial place" shall include any township, vill, village, or hamlet, being extra-parochial:

The word "commissioners" shall mean the ecclesiastical commissioners for England:

The word "lands" shall extend to and include manors, messuages, buildings, tenements, and hereditaments, corporeal and incorporeal, of every tenure and description:

The word "tithes" shall mean and include all commuted and uncommuted rent-charges in lieu of tithes, portions, and parcels of tithe, and all moduses, compositions, prescriptive and customary payments.

The expression "body or person" shall mean and include any body politic, corporate, or collegiate, the trustees, guardians, commissioners, or other persons having the control, care, or management of any hospital, school, or charitable foundation, and any corporation aggregate or sole as well as one person.

The word bishop shall include archbishop.

84. This act shall extend only to that part of the United Kingdom called England and Wales, and to the Isle of Man, and to the Islands of Guernsey, Jersey, Alderney, and Sark, and to the Scilly Islands.

85. Whenever it may be necessary to cite the said recited acts or this act, it shall be sufficient to use the expression "New Parishes Act," 1843, 1844, or 1856, as the case may require.

## LEGAL EDUCATION OF THE BAR.

In *The Times* of the 17th September it is stated that "the reform of legal education for the bar as hitherto attempted, has proved a failure. That there has been something radically vicious in the new system the result would appear to prove. The case as it stands at present seems to be pretty much as follows:—

"The old arrangements for admission to practice as a barrister remain as in former times, with this exception—that all students are compelled to attend two courses of lectures out of five, or to undergo an examination in all, in which case attendance upon any lectures at all is dispensed with. Five readerships have been established, and the readers deliver lectures, at stated times, upon the following subjects: 1. Legal and constitutional history; 2, civil law and international jurisprudence; 3, equity; 4, conveyancing; 5, common law. Attendance upon any two of these courses, as we have just said, will free the student from all further vexation and annoyance. He may sleep through the periods when he is compelled to appear in the presence of the lecturer. Ignorant as he went in, as ignorant he may come out. This, with the old dinner test and the payment of a very heavy fee, a considerable portion of which is no doubt charged to him for the stamp, will admit the so-called student to the practice of his profession.

"Now, we printed yesterday a letter from a correspondent upon this subject, who signs himself '*Expers*,' and who thus very truly and very briefly stated the result of this system hitherto:—'Legal education up to the present time has not attracted the attention of the most promising students at the inns of court; by the majority of this very important body it is considered a delusion; the legal

examinations are not generally attended by the ablest men; the whole system is discountenanced by the pleaders, conveyancers, and equity draughtsmen, who prepare young men for the practice of the bar.\* This we believe to be a very fair statement of the case. The fact is, that the little improvement that was made in the education of students for the bar was rather a concession wrung from the elder members of the profession by public opinion that an evidence of intention upon their own part to take the subject up in earnest as a result of their own deliberate conviction.

"It is still believed among the leaders of the profession that things are better left as they were. They are well aware that no practitioner will ever be able to retain the confidence of the attorneys who is destitute of the requisite technical skill. Success at the bar is the best test of competence, and this success no one can hope to achieve who is not versed in the niceties of legal practice. This being the view of the seniors, it is but natural that the students should model their opinions upon the opinions of those whose practice, and emoluments, and honours they wish in their turn to obtain. They do not ask what form of education is needed to make them enlightened lawyers, not only competent to deal with points of practice, but to appreciate the great principles upon which law is founded. For their purposes it is quite unnecessary that any reform should take place in the laws of England; and it is quite superfluous that they should have a knowledge of any branch of law save the one with which they are more immediately concerned in the daily routine of their business. What does it signify to an equity draughtsman or to a conveyancer that such a system as that of the civil law ever existed among mankind, or that constitutional law is synonymous with the just government of the country?

"This vicious view—for vicious it most undoubtedly is, as we hope to show in a very few words—is fostered and encouraged by the *patronage of the Attorneys*. Of these gentlemen, however, it would be most unjust to complain. It is not only excusable, but it is natural and inevitable, that they should select for employment just those barristers who are supposed to be most clever in the practice of their peculiar departments. If they honestly and fairly select their counsel upon these grounds they have discharged their duties to their clients and to the public. To be sure, in their own department of the profession they subject all candidates for admission to a most stringent and rigorous examination, and in this they do well.

"The present system adopted with reference to the bar is, on the contrary, a most vicious one, for practically it amounts to an absolute denial of legal education in any liberal sense to the members of the superior branch of the profession. If the bar would retain their superiority, which is now rather *nominal* than real, it can only be by raising their standard of qualification. Again, if we would have a race of more enlightened lawyers than at present, we can only attain this result by training the students in higher branches of legal knowledge, and, what is more, by taking care that they have attained a certain degree of proficiency before they are admitted to practise at all. The more the discouragement of the seniors, the more the patronage of the attorneys, the more the absorbing interest of after-practice, may pull in the other direction, the

more careful should we be to instil a few more liberal elements into the minds of the students while yet time and leisure serve to such an end. The acorn sown may grow into an oak, but oak never yet grew where acorn was not sown. The great ground, then, upon which the necessity for a liberal legal education for the bar should be rested is not, that under the present system we have failed to find eminent practitioners, but that for the future we require more extensive views, a more intimate knowledge of first principles, a greater familiarity with other systems of law, from the men to whom we may have to intrust the defence of our properties or our lives. Under the present system we may get on, but we want to do better. That is the reason for a superior legal education.

"After all, why should the bar be an exception to the ordinary rule of professions? *Attorneys* are examined; *physicians* are examined, so are *surgeons*; *clergymen* are examined—so are the engineers and artillery—and even the youths who present themselves as candidates for employment in the public offices can only be appointed after a most severe competitive examination. Why should barristers constitute the sole exception to a rule which would seem to be dictated by the most ordinary inspirations of common sense? In their case there is also an especial reason which would seem to necessitate the establishment of a sufficient examination. No doubt, in the case of the ordinary barrister who intends to follow his profession as a serious calling, if he break down as a practitioner, there is an end of him. He has been weighed in the balance and found wanting. We are, however, probably understating the case when we say that there is something like sixty per cent. of *nominal* barristers who never intended from the first to follow the profession as a means of livelihood, and of these probably forty per cent. who are constantly on the watch for *situations which can only be given to barristers of a certain standing*. Now, if these gentlemen are never examined on admission, and if in their case the test of employment and success is never applied, we should like to know what guarantee we have of their competence at all.

"On all these grounds, then, we trust the heads of the legal profession will be induced to reconsider the present system. Let the absurd and idle test of attendance upon a few lectures be abolished, and in place of it let every gentleman who may present himself as a candidate for the bar be subjected to a *serious examination*. It would be a great mistake to overdo this, and to frighten away the candidates for admission to the bar with too formidable a programme. We ask for nothing more than that degree of knowledge which any young man of ordinary capacity, who had devoted two or three hours a-day for three years of his life to the study of law with the proper collateral reading, might fairly be supposed to have attained. The question of an examination of a superior character for more ambitious students, and the rewards which might be appropriate in such cases, should be considered quite apart from the *minimum* of knowledge to be required of all. With the example of our universities before their eyes, the heads of the legal profession can scarcely go wrong upon such a point."

\* We have marked some passages in *italics*, to which we wish to call the attention of our readers.

## LAW OF COSTS.

### OF PETITION UNDER LANDS' CLAUSES ACT—OF PURCHASE OF LEASEHOLD INTEREST ON OTHER LANDS.

PART of the real estate belonging to a corporation had been taken by a railway company, and another part by a waterworks company, for the purposes of their respective undertakings, and the purchase moneys had been paid into court. It was now proposed with the moneys in court to buy up two long leases for ninety-nine years, granted in 1798, of other lands belonging to the corporation, and a petition was presented for the purpose.

The *Master of the Rolls* said: "The act specifies certain costs which are to be allowed, and the Vice-Chancellor of England, in *ex parte the Earl of Hardwick*, 17 Law J. Ch. 422, thought himself bound to follow the act. I cannot distinguish these two cases, and I am also bound to follow it. It is not necessary to send the matter to the conveyancing counsel, because the title is that of the corporation itself. The costs merely of obtaining the fund out of court must be paid by the two companies, and they must be apportioned between them in proportion to their purchase moneys."

*In re Manchester, Sheffield, &c., Railway Company, ex parte Corporation of Sheffield*, 21 Beav. 162.

## POINTS IN EQUITY PRACTICE.

### ATTACHMENT TO ENFORCE ORDER OF IRISH ENCUMBERED ESTATES COMMISSIONERS FOR PAYMENT OF MONEY.

HELD by the *Lords Justices*, that an attachment might issue in this country directing that a party against whom and his wife two orders had been made by the commissioners under the Incumbered Estates (Ireland) Act, 12 & 13 Vic. c. 77, s. 14, for the payment of £400, might pay that sum within a fortnight, or in default thereof stand committed, but *not* against the wife. *In re Keogh*, 5 De G. M'N. and G. 73.

### CERTIFICATE OF FILING OF ANSWER AND OF TRAVERSING NOTE AGAINST ANOTHER DEFENDANT IN ORDER TO MOTION FOR DECREE.

The two defendants in a suit had been served with interrogatories, and one put in an answer, but the other went abroad without having answered. The plaintiff filed a traversing note against the latter, and applied to the clerk of records and wrote for a certificate of the filing of the answer and of the traversing note for the purpose of having the cause heard upon a motion for a decree. Reference was made on the argument to orders 53 and 57 of May 8, 1845, and to the 15 & 16 Vict. c. 86, s. 16.

The *Lords Justices* held that the certificate ought to issue.

*Maniere v. Leicester*, 5 De G. M'N. and G. 75.

## CONSTRUCTION OF RECENT STATUTES.

### COMMON LAW PROCEDURE ACT, 1854.

#### SERVICE OF RULE UNDER S. 60 AS TO DEBTS DUE UPON DEBTOR'S WIFE IN ORDER TO ATTACHMENT.

The affidavit in support of a motion for an attach-

ment against the defendant, a judgment debtor, for not appearing before the master pursuant to a judge's order (made a rule of court), to be examined as to debts due to him under the 17 & 18 Vic. c. 125, s. 60, alleged a service of the rule upon the defendant's wife, but there was no allegation that it had ever come to his knowledge.

The *Court* held the service to be insufficient, and refused the motion.

*Mason v. Muggerridge*, 18 Com. B. 642.

### ANSWERING INTERROGATORIES UNDER S. 51 IN ACTION FOR INFRINGEMENT OF PATENT.

HELD, that it is no ground for refusing to answer interrogatories under the 17 & 18 Vic. c. 125, s. 51, in an action for the infringement of a patent, that the answers may expose the defendant's customers to actions.

*Telly v. Easton*, 18 Com. B. 643.

## MEDICAL JURISPRUDENCE.

### CASE OF PALMER.—POISONING BY STRYCHNINE.

We have been accustomed to record briefly in these pages "remarkable trials," especially where they involved peculiar examples of circumstantial evidence. And we are the more induced to advert to the extraordinary case of William Palmer, for the murder by poison of John Parsons Cook, in consequence of the discussion contained in the "Psychological Journal," edited by Dr. Forbes Winslow, in which the medical evidence on the trial is ably reviewed, and of a pamphlet on the subject which we have just received. We shall first, however, extract the masterly summary of the case by the editor of the *Times*:—

"The terrible details of this case and of the two others in which suspicion was raised against the prisoner have been discussed in every household of the three kingdoms. Popular feeling was so excited in the neighbourhood of the deed that the prisoner's advisers asked, and the Crown acquiesced in, a change in the place of trial. A new act of Parliament was passed to enable the Queen's Bench to send the matter before a metropolitan court. The postponement of the trial gave the prisoner every facility in preparing a plausible defence, even to the selection of scientific men to detail the events of their practice and to prosecute special experiments. The Crown, of its own free will, furnished the defence with all the evidence which it was intended to bring forward. Finally, six months after the commission of the crime, the Chief Justice of England and two other judges celebrated for their experience and acuteness took their seats on the bench. A jury, not taken from among the farmers of a small country district, but selected by chance from the trading class of a population numbering 3,000,000 of souls, removed as far as possible every suspicion of unfairness. Then came a trial of extraordinary length and labour. The opening speech of the Attorney-General lasted more than four hours; his reply was nearly as long. The prisoner's counsel defended him in a speech of eight hours. The case for the prosecution lasted six days; that for the defence more than three. The summing-up of the Chief Justice commenced at the sitting of the court on Monday, and was not concluded until yesterday



afternoon. The men of highest standing in the medical profession gave their evidence for the crown or for the prisoner. Finally, the jury, after listening with unwearied patience to the arguments and testimony for nearly twelve days, retired to consider their verdict. On their return into court the foreman pronounced the terrible word which consigns William Palmer to a murderer's doom.

"In the justice of the verdict every one who has followed these memorable proceedings must fully concur. Never was a crime more cruel, treacherous, and cold-blooded; never was it brought home by proof more cogent and irresistible. True, the evidence was circumstantial, but in some respects circumstantial evidence is the best. Where the proof of crime is assumed from the testimony of two or three who declare to its actual commission, there is room to doubt whether animosity, or a wish in the witnesses to screen themselves, may not have led to perjury for the destruction of an innocent man. But where a long series of facts, deposed to by numbers of persons unacquainted or unconnected with each other, all points to one conclusion, then there can be little doubt as to the decision. Never did testimony more various and more unshaken unite to bring home guilt than in the case of Palmer. Cook is well and in high spirits, and suddenly is affected by sickness for which no one can account. A few days afterwards he arrives in Rugely with the prisoner, and there the symptoms are repeated. He is not bilious, nor suffering from any complaint which should produce vomiting, and yet he is sick after everything that the prisoner administers. A servant in the place tastes the broth prepared at the prisoner's house, and suffers in the same manner for hours afterwards. When the unhappy man dies, antimony is found in the blood,—a fact which science pronounces conclusive of its having been administered within forty-eight hours before death. Yet no medicine containing antimony had been openly prescribed, nor is it pretended that the deceased was in the habit of taking any such drug. In fact, the defence totally evaded the question of the antimony altogether. The counsel brought witness on witness to give their speculations on tetanus, epilepsy, and convulsions, but no answer was made to the evidence which proved that Cook had vomited for days without a cause, and that after his death a poison which kills by producing vomiting had been found in his body in a state which showed it had been recently swallowed. Can we, therefore, come to any conclusion but that the prisoner, a medical man, having this drug in his possession, and knowing its effects, had used it for the purpose of producing in Cook symptoms which might be confounded with those of ordinary disease? For it is worthy of notice that it was not the interest of Palmer that his friend should die until the stakes and bets he had won were due, but that he should be ill and unable to receive them personally. Hence we find antimony used until Palmer has gained possession of large sums on Cook's account, and then, within a few hours, as soon as it became his interest that Cook should die, the first dose of strychnine is administered. Palmer's affairs, in fact, grew more desperate every day. The usurer who had him in his power was incessant in his demands for money. Palmer had forged his mother's name, the bills were due, and writs were out against both mother and son. Twenty-four hours might discover all; for, unless, £450 were paid immediately to Pratt, proceedings would be taken against

Mrs. Palmer. Cook had won money at Shrewsbury races, and had it about him; bets were due to him in London. That money disappears, no one knows how, and as for the bets, Palmer receives them through an agent, and applies them to his own use, the day before Cook dies. Here, then, is a motive for haste. If Cook discovers that he has been robbed, if the creditors discover that Mrs. Palmer's name has been forged, Palmer may within a week stand in a felon's dock. He knows the use of strychnine. He knows that it kills 'by tetanizing of the respiratory muscles.' Perhaps he does not know that it causes horrible convulsions of the whole body, but thinks that the sufferer dies with merely internal spasms. If we believe the witness Newton, he buys strychnine on the Monday night, and on that night he administers pills to Cook, which are followed by tetanus. There are doubts thrown on the evidence of Newton, because he concealed, or at least did not volunteer it, until the eve of the trial. But, even supposing this young man to be capable, for no earthly reason, of swearing away the life of one who had never done him wrong, the case does not end here. Another witness, whose testimony is not disputed, swears positively to the purchase of six grains of strychnine at a druggist's shop, that of Mr. Hawkins, on the succeeding day, but a few hours before Cook's death. If ever anything was proved in a court of justice, it is the purchase of this deadly drug by William Palmer. The defence, loosely enough, shifted its ground as regards this question. First, it was that no poison had been purchased, and that Newton was perjured; then it was that the strychnine might have been wanted to kill dogs which annoyed Palmer's horses in a paddock. Neither of these assertions is supported by a jot of evidence. The testimony of Newton was not shaken; that of Roberts was not even questioned. As for the supposed purpose of the strychnine, no evidence followed the suggestion of the prisoner's counsel. The death of the deceased occurred on the evening which succeeded the last purchase. He died just as strychnine is proved to kill. The evidence of the medical witnesses for the crown is decisive as to the improbability of his dying by any known form of disease. Mr. Curling, Dr. Todd, Sir Benjamin Brodie—all speak positively as to this point. Thus three main points of the case are made out fully—the death of the deceased by strychnine, the purchase of the poison by the prisoner within a few hours of the death, and the prisoner's pressing motive for the destruction of his companion.

"Only on one point can there be the slightest doubt. The body is unskillfully dissected, and the stomach, with some of the other parts, is sent to Drs. Taylor and Rees. They find no strychnine. Of course, on this the whole defence rests. A number of medical men are brought to declare that if strychnine had been taken it must, in their opinion, be found. But one fact is worth any number of opinions. Drs. Taylor and Rees perform experiments with rabbits, giving them not large doses, like the defence doctors, but just enough to kill. In two cases strychnine is found; in two it is not. Therefore these two gentlemen are justified in declaring that, according to the tests made use of by them in the case of Cook and in the case of the animals, the poison is sometimes found and sometimes not. We cannot but think that the witnesses for the defence endeavoured to prove too much. Scientific dogmatism could go no further than what

two gentlemen alleged that Cook could not have taken strychnine because he allowed himself to be touched,—an act which always threw a rabbit into a spasm. Equally unavailing for the prisoner were the suggestions as to the cause of death; it was apoplexy, epilepsy, idiopathic tetanus, traumatic tetanus, epilepsy with tetanic complications, and so on. There were as many opinions as men; and though certainly a prisoner is not bound to account for the cause of death, yet a jury, observing the differences between these witnesses, who made such a display of science, might naturally be led to think that their opinions were not sufficiently authoritative, to destroy the testimony of facts and the deductions of common sense. If we add to this that in one case a medical witness confessed to having expressed a belief in Palmer's guilt, and an opinion of the incompetency of Dr. Taylor to detect it, we can have little wonder that the jury should have made so little of the large array of testimony for the defence.

"All these points were fully noticed by the Chief Justice in his long and conscientious summing up, as well as those minor incidents which strengthen into certainty the belief of the prisoner's guilt. The anxiety about the jar, the presents to the coroner, the attempted bribing of the postmaster and the postboy, the curiosity about Dr. Taylor's analysis, leading the prisoner to procure the tampering with his letter, and inconsistent with the knowledge that no strychnine had been administered, all forced home the conclusion of the prisoner's guilt."

The reviewer in the "Psychological Journal" observes:—

"That strychnine was either in the contents of the stomach or in some of the tissues of Cook's body, able chemists entertain no shadow of a doubt. Had Taylor been happily successful in his analysis, and had detected even the 50,000th part of a grain of the poison, that discovery, conjoined with the overwhelming and crushing circumstantial evidence of Palmer's guilt, would have settled his conviction and condemnation in a few hours.

"As to what was the real cause of Cook's death, Brodie, Todd, and others have no doubt. They affirm that it was strychnine. The questions raised by the defence of the possibility of Cook's death being the result of some tetanic disease, instead of poison, is alleged to have broken down, and disappear in the course of the cross-examination by the Attorney-General. It has subsequently been conjectured that death might possibly have arisen from some new form of disease, of a tetanic character, not yet recognised. Cook was said to have died with indistinguishably the same symptoms, even to the very last expression of 'turn me over,' as Mrs. Sargeantson Smyth and Mrs. Dove, in both of whose cases strychnine was known to have been the cause of death beyond dispute. Five theories were set up by the defence in opposition to the fact of the identity of death from strychnine in Cook's, Dove's, and Smyth's cases. The five theories were—idiopathic and traumatic tetanus, tetanic complications, epilepsy, and angina pectoris.

"As to idiopathic tetanus, it was asked, where were the signs of it? If it was traumatic, where was the wound or injury of a nerve to account for it? No one could point it out. As for tetanic complications, the witnesses for the Crown scouted the idea. Epilepsy—Was it epilepsy? Not one of the medical witnesses either for the prosecution or

the defence could say it was. Hydrophobia would have been a much more plausible theory to account for Cook's symptoms—though it does not appear that Cook had ever been bitten by a mad dog—than the suggested one of angina pectoris; for hydrophobia is a tetanic disease, whereas angina pectoris is not.

The article concludes with some remarks on the expressions and behaviour of the convict just prior to his execution; but we think too much importance is attached to the language of a man so criminal, artful, and self-possessed. The writer remarks, that when pressed to confess, all that Palmer would admit was, that "Cook did not die from strychnine." And adds:

"It was obvious, by his refusing to answer the question repeatedly and earnestly addressed to him a few minutes before his execution, whether he was instrumental in Cook's death, that he was exercising some mental reservation on the point. When Major Fullford begged him to admit the justice of his sentence and unburthen his conscience before entering into the presence of his Maker, Palmer's remark was, 'Cook did not die from strychnine;' and when implored to say 'yes' or 'no' to the question—was he not the murderer of Cook, he replied, 'I have nothing more to add; Lord Campbell summed up for strychnine.' If Palmer had positively repudiated all participation in Cook's death, his denial of the fact, even at the awful moment immediately preceding his execution, would not have been entitled to one moment's consideration, or to the slightest credence; but, as Palmer would not deny his guilt, but persevered to the last in emphatically asserting that Cook did not die from the effects of strychnine poison, we think we are justified, according to the recognised rules of evidence, in concluding that strychnine was not the specific poison that caused Cook's death. The reader must view Palmer's statement not only in conjunction with the fact that Drs. Taylor and Rees could not discover strychnine in the contents of Cook's stomach, but in relation with the conflicting medical testimony adduced at the trial, as to the true character of the symptoms exhibited by Cook during his fatal illness. We cannot conceive how any person, accustomed to consider and weigh nice points of evidence, can arrive at any other conclusion. That Palmer murdered Cook is, to our mind, an indisputable fact; but, according to our apprehension, strychnine was not the poison used for the purpose! Well then, it may be asked, if Palmer was conscious of his having accomplished his murderous designs by the administration of some other poison, and not by strychnine, how can this solemn declaration—"I am an innocent man"—be made consistent with such an hypothesis? It must be borne in mind that William Palmer was indicted for murdering John Parsons Cook by means of strychnine. He was accused, tried, convicted, sentenced, and hanged for committing the murder in the manner set forth in the indictment. If strychnine had nothing to do with Cook's death,—if the poison had never been exhibited by Palmer to Cook, or by any other person with his knowledge,—then Palmer was falsely convicted, for he was innocent of the particular offence imputed to him. If a man is accused, tried, convicted, and hanged for drowning a person found, under questionable and suspicious circumstances, dead in the water, and he had no more hand in so

destroying him than the Emperor of China or the King of the Sandwich Islands, the accused party is wrongly convicted and unjustly punished. He may, some days prior to the death of the party found drowned, have administered to him some deadly drug, or have given him a blow on the head, thus causing temporary mental derangement, impelling the party to the act of suicide, but of the particular and specific offence for which he is tried, convicted, and executed—viz., murder by drowning—he is clearly and undoubtedly innocent. The fact of the man being a murderer and justly deserving death upon the scaffold does not affect our position. The offence or crime for which a party is arraigned must be clearly established against him before he can legally be found guilty and punished. There would be no safety or security for society unless this principle were strictly, stringently, and jealously adhered to in the administration of the criminal jurisprudence of the country. We feel anxious to place this question fairly, dispassionately, and legitimately before our readers, not having the faintest shadow of a doubt as to the guilt of the miserable man who has gone to his last account, or as to the moral justice of his conviction, sentence, and death."

On this subject we may add, that a pamphlet has just been published, called "Palmer Exhumed," by L. B., a Master of Arts of Cambridge,\* who states that "he believes that a murder of the blackest hue hastened Cook to the grave," but he demurs to the grounds on which "the judge and jury elevated a belief to the rank of a demonstrated proposition." The writer, though acknowledging the blackness of the murder, proceeds to attack the sufficiency of evidence for the prosecution, both medical and circumstantial; advocates the superiority of the medical witnesses for the defence; criticises and condemns as inconclusive the reply of the Attorney-General; and contends that the charge of the Chief Justice was not fair and impartial. We, on the contrary, think that the judge, in summing up the evidence, directed the attention of the jury to every material point in the prisoner's defence, and properly left all the questions of fact to their decision.

We have not seen a copy of the indictment, but it appears by the short-hand notes of the Central Criminal Court, published by the authorities of the City, that "William Palmer was indicted for the wilful murder of John Parsons Cook, and he was also charged on the coroner's inquisition with a like offence." The verdict of the jury was "Guilty." The question now raised is surely not one of special pleading on the form of the indictment!

If there had been any omission whatever, in the Chief Justice's charge to the jury, which would have told in the prisoner's favour, the other two eminent judges would have suggested it; and it may be observed that each of the common law courts was represented by a judge of long experience and great

acuteness, as well as legal learning. What more could be required?

The summing-up of the evidence abounds with expressions addressed to the jury, such as the following:—"It is for you to draw your own inference from this evidence;" "You must consider all the evidence with regard to this part of the case;" "It is for you to draw whatever inference may suggest itself to you from this circumstance." On one part of the evidence it is said, "taken by itself, it amounts to very little; you must infer," &c.; "It is for you to say whether the testimony is worthy of being believed." On an objection made on the part of the defence, "that certainly requires consideration at your hands." On another point, it is observed, "No inference unfavourable to the prisoner can be drawn, as it might be the result of accident." Again, "That is not a decisive proof of guilt, but it is for you to say," &c.; "It is for you to consider how far the symptoms," &c.; "Great reliance is placed by the prisoner's counsel that no trace of strychnine was detected." One of the witnesses, "a very distinguished chemist, says that where there has been death by strychnine, it ought to be discovered;" "You are to say whether you can infer that the case of Cook was one of idiopathic tetanus;" "On you devolves the duty of inquiring and deciding;" "After a fair review of all the circumstances, decide for yourselves," &c. After recapitulating the testimony for the defence, it is said, "You will determine what weight you will attach to this evidence as compared with the medical testimony adduced by the Crown." Adverting to the conflicting evidence, it is remarked, "You are to judge between them;" "You are to say whether the witness is to be believed." In conclusion, the Chief Justice said, "The case is now in your hands. Unless, by the evidence for the prosecution, a clear conviction has been brought to your minds of the guilt of the prisoner, it is your duty to acquit him. You are not to convict him on suspicion, even on *strong suspicion*. There must be a strong conviction in your minds that he has been guilty of this offence; and if you have any reasonable doubt, you will give him the benefit of that doubt. But if you come to the clear conclusion that he is guilty, you will not be deterred from doing your duty. You will remember the oath you have taken, and you will act upon it."

## TOUTING FOR CRIMINAL BUSINESS.

It is a well-known rule of the profession, in both of its branches, that its members must not canvass for employment. The clients select and retain their legal advisers. This rule is, we believe, generally adhered to; but in the police courts, and frequently at the sessions and assizes it is too often disregarded.

There are several able and respectable solicitors in London who give their attention to criminal law and practice, and whose valuable services may be

\* Printed for the author by Palmer and Son, 18, Paternoster-row.

relied upon either to prosecute or defend the accused. But we regret to say that there is an inferior class of these practitioners who bring discredit on the profession, and inflict serious injury on their clients.

The nature and extent of this practice is well described and justly censured in the *Globe* of the 2nd instant. The editor observes that:—

"There exists in some of our police courts a class of 'touts'—persons who canvass to obtain clients for attorneys practising in the courts. This canvassing is conducted in various ways, but one instance will suffice to illustrate the *modus operandi*. The tout who is qualified to act for an attorney goes to see a prisoner in the cell of the police station, probably a man who has just been captured by the police. The kind visitor hears a statement of the prisoner's case, and finds out whether he has the means to pay a lawyer. If this last point is ascertained to his satisfaction, the tout recommends the man to have legal advice immediately. He then draws out, if not all the fee, something 'on account;' and in most cases the attorney working in concert with the tout then pays his visit. The money has to be divided: part goes to the tout, or to the attorney's clerk, sometimes to both; another portion may stray into other hands, if that would facilitate such interviews in the prison; and for the attorney, perhaps, about a third is left.

"The lawyers of this class pay their clerks a small salary, if any; but make up a larger amount by a per-centage out of the money that can be drained from the prisoner under the joint effect of forebodings and hopes. Very often this nefarious tax is levied upon the unhappy 'friends and relations,'—and the better hearted those innocent folks are, the less they have become acquainted with crime and its atmosphere, the stronger is the screw to press from them all that they can 'raise' for the occasion. We know of instances in which the attorneys, unable to get cash, have taken goods, or even *duplicates* for goods! The rascality of such practices is not the strongest reason for stopping them: a moment's thought will suggest the suffering and misery inflicted upon unfortunate and innocent people by the torture of this pettifogging thumb-screw.

"Yet even *that* is not the worst. It sometimes happens, we might say often, that the interest of the attorney is to get the prisoner committed for trial, even where the case might be ended by summary adjudication. The committal may be managed, if important evidence be kept back; and that may be done if the prisoner be told:—'You are sure to be committed; reserve that point then for your trial; it would be certain to tell with a jury.' This trick not only defeats the ends of justice, but defrauds the county.

"We know that respectable attorneys practise in the police courts, and that they have exerted themselves to put down the whole base system. Their task is difficult, perhaps impracticable, unless they receive support. One support can be given by publicity. Perhaps the highest authorities of the police courts might do something; for, although we should respect the utmost jealousy that could be felt at any interference with the freest access between prisoners and their legal advisers, it would be pedantry to treat practices like these as 'legal assistance,' or to wink at them because some ingenuity may be used in veiling them."

## SELECTIONS FROM CORRESPONDENCE.

### SERVICE OF ARTICLES TO A COUNTY PALATINE ATTORNEY.

A. HAS served his articles with B., an attorney of the superior courts. A. has been admitted an attorney of the courts of the Duchy of Lancaster only. Can he take a clerk under articles without an admission in some of the Courts at Westminster, and will such clerk be entitled to admission in the superior courts, although his master was not admitted therein?

M. A.

[We think the articles to A., an attorney admitted only in the County Palatine Court, will not entitle the clerk to admission in the superior courts, although A. was articled to an attorney of the superior courts. A. should be examined and admitted in the superior courts.—Ed.]

### SURRENDER OF LIFE POLICIES.

With reference to the letter of "Clio" in a recent number, I beg to say that the office in which I am insured, the Minerva, have long adopted his suggestion, but they state in their advertisements that they are the only assurance office that afford this advantage.

One of the indorsements on my policy is the following undertaking signed by the actuary.

"It is hereby understood that a return of forty per cent.—or two-fifths of the ordinary premiums received on this policy will, at any time, during the continuance of the assurance hereby granted be made for the surrender thereof."

T. E. R.

### SURPLUS MORTGAGE RENTS.

A mortgagee, who has notice of three subsequent incumbrances, takes possession of the mortgaged premises, and receives the rentals which are more than sufficient to keep down the interest under his own security. Would he be justified in handing over the surplus to the mortgagor? or what is the proper and usual course under the circumstances?

JUNIUS.

## NOTES OF THE WEEK.

### PROROGATION OF PARLIAMENT.

On Tuesday last, the 7th of October, the Lord Chancellor, pursuant to her Majesty's commission, prorogued Parliament until Thursday, the 13th of November, but *not* "for the despatch of business," and of course there will be a further prorogation.

### LAW APPOINTMENTS.

Mr. William Thrush Jefferson, solicitor, Northalerton, has been appointed registrar of the County Court in the room of Mr. Richard Perkins, resigned.

Mr. Thomas Tamplin Lewis, solicitor, has been appointed clerk of the Bridgend County Court, in the room of Mr. William Lewis.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

## Appeals in Chancery.

## VENDOR AND PURCHASER.

4. *Interest—Wilful default—Just allowances.*—Where conditions of sale provide that interest shall be paid by the purchaser from a fixed time if the completion should be delayed by any cause whatever, delay merely occasioned by the state of the title, and not wilful on the part of the vendor, falls within the provision.

Where in addition to such a provision there were stipulations that the vendor might rescind on the title being objected to, and that if a good title should not be made to a defined proportion of the property, compensation should be allowed: *Held*, on appeal from the *Master of the Rolls*, 17 Beav. 267, that the non-delivery of a complete abstract, at a time fixed by the conditions, would not of itself exempt the purchaser from payment of interest.

Where the execution of an agreement fixing a time for completion, and requiring payment of interest in case of delay was intercepted by negotiations, ending in an alteration of the agreement, but not of the time for completion: *Held*, that in fixing the period for the payment of interest this circumstance ought to be regarded.

A vendor who has to account to the purchaser for rents and profits from the time fixed for completion is not, unless a special case be made, liable to account for sums which he might have received but for his wilful default, nor entitled to an inquiry as to repairs or lasting improvements.

In fixing occupation rent to be paid by a vendor in such circumstances, it is not according to the course of the court, to insert in the decree a provision respecting income tax, any just allowance, in that respect, being comprehended in the general and usual word.—*Sherwin v. Shakspear*, 5 De G. M'N. and G. 517.

5. *Railway shares—Specific performance—Privity of contract.*—The plaintiff employed a broker to sell railway shares and the broker employed an auctioneer, who sold the shares by auction to the defendant. A few days after, the defendant employed the same auctioneer to re-sell the shares which were accordingly sold by him to a third party, whose name was handed in to the plaintiff's broker for the purpose of preparing the deed of transfer, which was thereupon executed by the plaintiff conveying the shares to such third party, who refused to complete the contract by registering the shares in his name. One year after this sale, during all which time the plaintiff was ignorant that the defendant had been the original purchaser (the shares remaining in the plaintiff's name and calls having been made) he filed his bill for specific performance against the defendant: *Held*, dismissing with costs an appeal from Vice-Chancellor Stuart, that having executed the deed of transfer to the third party, the privity of contract between the plaintiff and defendant no longer existed, and the bill was accordingly dismissed.—*Shaw v. Fisher*, 5 De G. M'N. and G. 596.

## VOLUNTARY STATEMENT.

See *Creditor's suit*.

## WILFUL DEFAULT.

See *Vendor and purchaser*, 4.

## WILL.

1. *Construction—Contingent bequests.*—A testatrix bequeathed the interest of long annuities to her sister, and in case of one or both of their deaths before her gave "the whole of interest in long annuities" to her brother for life. At his death half of the interest she gave to the daughter of the brother till she attained twenty-one and "then to receive half the capital." Likewise the testatrix bequeathed to a son of her brother the other half. *Held* (varying the decision of the *Master of the Rolls*), on the construction of the whole will, that the bequests to the niece and nephew were not contingent upon the sisters' deaths in the testatrix's lifetime.—*Boosey v. Gardner*, 5 De G. M'N. and G. 122.

2. *Construction—Gift of annuity—Interest for life.*—Bequest to A. M., a married woman, of an annuity "for her life and the issue of her body lawfully begotten, on failure of which to revert to my heirs," with a request that K. and C. would act as trustees for A. M., so that the annuity might be secured for her sole use and benefit: *Held*, on appeal from the V. C. Stuart, by the Lord Chancellor, and the Lord Justice Turner, the Lord Justice Knight Bruce giving so opinion on the point, that A. M. took an interest for life only with a gift in the nature of a remainder to her issue. *Held*, by the Lord Justice Turner, that, according to the true construction of the devise, the life interest of A. M. was merely equitable, and the interest of the issue legal; and that, therefore, A. M. could not have taken an estate tail, even if the devise had been of real estate; and also that, admitting the annuity to partake of the nature of real estate, it did not follow that in construing the will it ought to be treated as real estate; for that it was, in fact, personal estate, with peculiar incidents belonging to it in that character.

There is nothing in the decisions relative to the limitations of personal estate by which an absolute interest has been held to be given to the first taker, which obliges the court in construing bequests of personality, where technical words are not used, and the interest of the first taker is expressly confined to a life estate, to act on principles derived from laws of tenure, and not resting on intention.—*By the Lord Chancellor*.

The Court in construing a disposition by will of personal estate, is not to be absolutely governed by the rules which would be applied at law in the case of real estate.—*By the Lord Justice Turner*.

The decision of Lord Thurlow, in *Knight v. Egan*, 2 Bro. C. C. 570, approved of, and held not to be overruled; and the cases of *Attorney-General v. Bright*, 3 Keen, 57; *Tate v. Clarke*, 1 Bear. 100; *Jordan v. Lowe*, 6 Beav. 350; and *Bird v. Webster*, 1 Drew. 838, commented upon.—*By the Lord Chancellor and the Lord Justice Turner*. *Ex parte Wych*, 5 De G. M'N. and G. 188.

Cases cited in the judgment: *Tothill v. Pitt*, 1 Madd. 489; 7 Bro. P. C. 453; *Elton v. Esau*, 19 Ves. 72; *Britton v. Twining*, 3 Mer. 76; *Lyons v. Mitchell*, 1 Madd. 467; *Chandless v. Price*, 3 Ves. 99; *Abbott v. Daly*, 4 B. and A. 59; *Oates v. Cooke*, 3 Burr. 1064; *Trent v. Hanning*, 1 Bos. and P. N. R. 116; 10 Ves.

456; 7 East, 95: Doe v. Woodhouse, 4 T. R. 89: Mogg v. Mogg, 1 Mer. 654: Dunk v. Fenner, 3 Russ. and M. 457: Darley v. Martin, 17 Jur. 1125: Forth v. Chapman, 1 P. Wms. 663: Clare v. Clare, Cas. temp. Talb. 31: Warman v. Seaman, Finch, 279: Stafford v. Buckley, 2 Ves. 3. 170.

3. *Executor—Power of sale by implication—Seeing application of purchase money.*—A testator devised lands for life, with contingent remainders over, and had devised other lands to another tenant for life, with contingent remainders over, and charged the latter lands with the payment of a mortgage on the former lands, and also with his debts generally, but gave no express power of sale: *Held*, by the Lords Justices, dismissing with costs an appeal from the Master of the Rolls, that the executor took a power of sale by implication, and that after a sale of the latter lands by the executor, the devisees of the former had no equity against the purchaser in respect of the charge of the mortgage debt. *Robinson v. Lovett*, 5 De G. M'N. and G. 272.

4. *Construction—Legacy—Children of child dead at date of will.*—A testator bequeathed a sum of stock in trust for a daughter for life, and in case there should be no child of the daughter living at her decease, or being such, they should all die under twenty-one, then the testator bequeathed the stock unto all and every his children then living, and the child or children of such of his said children as should be then dead in equal shares, but so that such his grandchildren should only have among them such share as their parents would respectively have been entitled to in case they had been then living: *Held* (dismissing with costs an appeal from Vice-Chancellor Wood), that children of a child of the testator known by him to be dead at the date of the will, did not take any interest.—*In re Thompson's Trusts, ex parte Tunstall*, 5 De G. M'N. and G. 280.

Case cited in the judgment: *Tytherleigh v. Harben*, 6 Sim. 329.

5. *Construction—"Money"—Stock does not pass.*—Under the following bequest, "to my brother, J. T., the whole of my money for his life, at his death to be divided between my two nieces Rebecca and Mary L., my clothes to be likewise divided between them, my watch and trinkets for my niece Mary L. I likewise declare the longest survivor of the above-mentioned nieces is to become possessor of the whole money:" *Held*, confirming the decision of Vice-Chancellor Wood, that stock did not pass.—*Low v. Thomas*, 5 De G. M'N. and G. 315.

Case cited in the judgment: *Lynn v. Kerridge, West's Rep. temp. Hardw.* 172.

6. *Conversion—Breach of trust.*—A testator gave the residue of his estate to trustees, who were also his executors, desiring them immediately after his decease to convert all his personal estate into money, and to invest the amount "in the Bank of England," and to permit his daughter to receive the rents and profits, dividends or "other annual produce" of his personal estate for her life, for her own use, and after her death the property was to go to her children equally. The testator died in 1825 possessed of, among other things, £24 Long Annuities, which the executors did not convert, but permitted the tenant for life to enjoy in specie. On the death of the survivor of the executors, his executors also neglected to convert the Long Annuities. The tenant for life had represented both to the original executors and to the executors of the survivor the propriety of a conversion. She had mortgaged her interest, and two of the children had mortgaged their shares in the residue. Upon bill filed by all the children against

the executors of the surviving executor and their mother, *Held*, on appeal from the Vice-Chancellor Stuart, that the non-conversion was a breach of trust, and that the executors must account for the difference between the value of the Long Annuities at the end of one year from the date of the testator's death, and their value when paid into court; that the tenant for life was not liable to refund the over-payments voluntarily made to her, and that the facts disclosed no case of acquiescence either on the part of the tenant for life or those in remainder.—*Bate v. Hooper*, 5 De G. M'N. and G. 338.

Case cited in the judgment, *Howe v. Earl Dartmouth*, 7 Ves. 137.

7. *Construction—Husband does not take as person entitled under statute of distributions.*—Under a bequest (in the event of daughters dying without leaving issue) in trust for the persons who would, at the time of the decease of such daughters respectively, be entitled as next of kin, or otherwise, to the personal estate of such daughters respectively, under the statutes made for the distribution of intestate's effects: *Held*, dismissing with costs a petition of rehearing, 2 De G. M'N. and G. 715, that the husbands of the daughters did not take.—*Mime v. Gilbert*, 5 De G. M'N. and G. 510.

Case cited in the judgment: *Garrish v. Lord Camden*, 14 Ves. 372.

8. *Construction—Shares per stirpes.*—A testator gave his real and personal estate to trustees on trust, to sell and convert the same and pay the interest and annual produce to his ten nephews and nieces *nominatim* for their respective lives, and after their respective deceases the share of such nephew or niece so dying "to be held in trust for all and every the children or child of my said nephews and nieces, who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, to be divided between and amongst such last children, if more than one, in equal shares and proportions; and if any one or more of them my said nephews and nieces shall not have any child, who being a son shall attain twenty-one or being a daughter shall attain that age or marry under it, then and in each or any such case as well the original share or shares of, as also the share or shares surviving or accruing to each or any such last-mentioned nephew or niece and his or her child or children, or to such child or children only in possession or expectancy, &c., shall go and accrue to and vest in the survivors or survivor or others or other of them my said nephews and nieces and their respective children, at and in such and the same times, shares and proportions and manner as are hereinbefore expressed of and concerning their respective original shares," &c. One of the nephews having died, leaving an only child, an infant: *Held*, reversing the decision of Vice-Chancellor Stuart, that such only child exclusively became presumptively entitled to his father's share, subject to its going over as provided by the will in the event of his dying under twenty-one without children.—*Hunt v. Dorsett*, 5 De G. M'N. and G. 670.

9. *Construction—Trust created by words of reference—Duplication of charges.*—A testator by his will limited real estate to trustees for a term of 500 years, upon trust in a certain event to raise £20,000 and to stand possessed as to one-fourth part thereof "upon such trusts as are hereinafter declared touching the sum of £20,000 Three-and-a-Half Per Cent. Consolidated Bank Annuities hereinafter bequeathed in trust for the benefit of my son W. F. H. his wife,

children and issue as hereinafter mentioned;" in a subsequent part of his will he directed other trustees to stand possessed of a sum of £20,000 Three-and-a-Half Per Cent. Consolidated Bank Annuities upon trust to pay the dividends, interest and annual produce to his son W. F. H. and his assigns during his life and after his decease in trust during the widowhood of E., his wife, to pay her out of the interest, dividends and annual produce the clear yearly sum of £200, but if she should marry again then after her second marriage to pay to her separate use free from the debts and engagements of any her future husband the clear sum of £100 only during the then remainder of her natural life, and after the death of his son W. F. H., subject to the said provision for his wife upon trusts for the children of his son W. F. H.: *Held*, reversing the decision of the *Master of the Rolls*, that the widow of the testator's son W. F. H. took only one annuity of £200.

A trust created by reference to other trusts ought not, generally speaking, to be so read as to create a duplication of charges.

*Hindle v. Taylor*, 5 De G. M'N. and G. 577.

And see *Mortmain Acts*, 1, 2.

#### WINDING-UP ACT.

See *Specific performance*, 2.

### Appeals under the Winding-up Acts.

#### ACTION AT LAW.

See *Creditors*, 1, 2.

#### ASSURANCE COMPANIES.

See *Directors*.

#### CALL.

#### Managing Committee—Parties—Official manager.—

By the subscribers' agreement of a provisionally-registered railway company, the subscribers who were expressed to be parties of the first part, covenanted with trustees (who were expressed to be parties of the second part), that they would indemnify the managing directors (who were expressed to be parties of the third part, as distinct parties, and also to be among the parties of the first part). Preliminary prospectuses were circulated naming the managing directors, among whom was F. (who was named also in the deed as one of the parties). F. never agreed to be connected with the undertaking, but expressly declined to be so. None of the managing committee paid any money or executed the deed. On the company being wound-up:—*Held*, reversing the decision of V. C. *Stuart* (2 Smale and G. 1)—

1. That a call on the subscribers, exclusively of the managing committee, as primarily liable under the covenant for indemnity ought not to have been made.

2. That on a motion of some of the subscribers to discharge a call, the court could not properly make an order staying all proceedings under the winding-up order and directing the official manager to repay all moneys which he had received, the notice of motion not seeking such an order, and some of the respondents, who were served, not having appeared.

3. That the official manager was entitled to appeal from the order.

4. *Semble*, that the order to stay all proceedings could not have been properly made without the creditors who had proved, and the subscribers who had overpaid, being before the court.

5. That the absent parties were not sufficiently represented by the official manager.

6. Leave having been given to serve with notice of an appeal, from an order staying all proceedings made on a motion to discharge a call, a member of the committee, who had not been served with the original motion to discharge the call; *held*, that he could not object that the appeal was out of time. *In re Dover, Hastings and Brighton Junction Railway Company, ex parte Carey*, 5 De G. M'N. and G. 94.

#### CONTRIBUTORIES.

*Directors—Transfer ultra vires.*—The deed of settlement of a joint stock company provided for the transfer of shares with the approbation of the directors. Some of the shareholders threatened to take proceedings to set aside a purchase and lease for fraud, whereupon the directors agreed with them that they should be allowed to transfer their shares on payment to the company of a sum, out of which a claim of one of the directors against the company should be satisfied. The money was paid and the claim satisfied out of it, and the shares transferred to nominees of the directors for a nominal consideration: *Held*, on appeal from the *Master of the Rolls*, 18 Beav. 339, that the transaction was inconsistent with the duty and beyond the power of the directors, and that the shareholders were, notwithstanding the transfer, properly placed on the list of contributors under the winding-up acts.

Directors of joint stock companies are in a sensu trustees.—*In re Cameron's Coalbrook Steam-coal and Swansea and Loughor Railway Company, ex parte Bennett*, 5 De G. M'N. and G. 284.

Case cited in the judgment: *Straffon's Executors' case*, 1 De G. M'N. and G. 576.

#### CLAIM.

See *Creditors*, 2, 3.

#### CREDITORS.

1. *Rights of engineer—Action-at-law.*—By the subscription contract of a provisionally-registered railway company the managing committee were empowered to appoint engineers and to enter into any contracts for making the proper surveys and taking all necessary measures with a view to the application to Parliament for carrying the project into effect, and the subscribers covenanted that in the event of the application to Parliament being unsuccessful, they would pay and discharge all the costs and expenses which should have been incurred with a view to the promotion of the undertaking.

The application to Parliament failed, the company was ordered to be wound up, and an engineer employed by the committee tendered a proof against the company under the winding-up order.

*Held*, reversing the decision of Vice-Chancellor *Stuart*, that the debt (if any) was one due from the company, proveable under the winding-up order, and an action having been brought under the direction of the court to determine the amount due, the official manager was directed to admit that the debt was due from the company. *Held*, also, that on the official manager failing to obtain funds under the winding-up order to meet the demand, the creditor was entitled to proceed at law on the judgment so obtained, and leave was, on appeal, given for that purpose. *In re London and Birmingham Extension and Northampton, Daventry, Leamington, and Warwick Railway Company, ex parte Prichard*, 5 De G. M'N. and G. 484.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, OCTOBER 18, 1856.

### PROPOSED DISTRICT OFFICERS TO SUPERINTEND PROSECUTIONS.

WE have noticed the several objections to the proposed appointment of public prosecutors, official counsel and attorneys to conduct criminal prosecutions;\* and think that, with certain important exceptions, the aggrieved parties should be allowed to select their own attorney and counsel and to conduct their cases as they may be advised. We agree, however, with the recommendations contained in the able Report of Mr. Greaves on "Criminal Procedure,"—subject, it may be (on further consideration), to some modifications regarding the appointment of *district officers to superintend* prosecutions of "heinous offences."†

The appointment of one person as a public prosecutor to discharge all the various and complicated duties essential to the due and complete administration of the criminal law throughout the length and breadth of the land would evidently fail of any useful or satisfactory result. There should be a competent number of officers selected in different parts of the country proportioned to the wants of each district, and the officer should have assigned to him such an extent of official duty as he could efficiently perform. In order to appoint properly qualified persons, and to determine the number that should be selected, we shall extract from the Report of Mr. Greaves a statement of the duties which he conceives the district officer should be required to execute.

"On the commission of any heinous offence he should proceed to the place, and cause all necessary inquiries to be made, with a view to the discovery of the offender. In order to enable him to perform this duty it should be incumbent on all peace officers to give him notice of the commission of every such offence.

"He should have authority to direct all peace officers to assist in his inquiries.

"He should be empowered to attend any investigation before the magistrates or coroner, and be

entitled to *regulate*\* the examination of witnesses and the evidence adduced, and to see that the proceedings on such occasions were regularly conducted.

"In all capital cases it should be his duty to attend before the magistrates or coroner; and in every other case, which from its difficulty or particular circumstances required more than ordinary care and attention, he should also attend before the magistrates, if practicable.

"In all cases, to which he did not personally attend, it should be his duty to read the depositions, and to give any directions to the attorney for the prosecution as to anything which might appear to him expedient to be done—a. g., the obtaining additional evidence, or the omitting superfluous witnesses.

"Where a defendant called witnesses before the magistrates, or was expected to call witnesses on his trial, it should be his duty to make, or cause to be made, any such inquiries as should seem expedient to ascertain whether the defence were founded in truth or the contrary.

"In any case where on investigation it appeared to him that the prisoner had an honest defence to set up, and where he was also satisfied that the prisoner was so poor as to be unable to make that defence, he should be empowered, in his discretion, to direct an attorney to be employed, and such witnesses to be subpoenaed as he thought fit, or the latter only.

"Where the magistrates entertained any doubts, and required his opinion, it should be his duty to advise them, and in cases of difficulty to obtain the opinion of the Crown counsel, hereafter suggested, for their guidance.

"When a case had been sent to trial, it should be his duty to take care that any additional inquiries that were expedient should be made.

"Whenever any attorney applied to him as to any evidence to be obtained or other matters to be done, it should be his duty to decide what should be done, and the responsibility of its being directed to be done or omitted should rest upon his shoulders.†

"It should be his duty to attend the grand jury, swear the witnesses, and watch their evidence, with the depositions or a copy in his hand, and ask any questions that might be necessary to elicit all the evidence they could give.‡

\* We doubt whether the district officer should be permitted to "regulate" the examination of witnesses. The legal advisers of the prosecutor, subject to the control of the magistrates, may safely be left to discharge this duty.

† This would often relieve the prosecutor's attorney of much responsibility, especially in reference to the costs and expenses which the prosecutor may be entitled to recover from the county.

‡ The prosecutor's attorney should also be entitled to attend the Grand Jury and perhaps also the prisoner's attorney. They attend the magistrates and coroner: why should they not attend the grand jury?

\* See p. 213 ante.

† The "superintendence" of criminal procedure is very different from the appointment of district attorneys and agents and the selection of official counsel wholly to conduct all prosecutions.



"It should also be his duty to see that the grand jury did not throw out any bill unless the whole of the members of it voted on the bill; but he should take no part in their deliberations as to the finding or throwing out of any bill, though it should be his duty to explain the nature of the charge contained in the indictment, and any matter or thing which might tend to facilitate the performance of their duties.

"In case after conviction the court or the Home Office should require any information, it should be his duty to make, or cause to be made, any inquiries that should be necessary for the purpose of obtaining such information.

"Wherever the depositions of witnesses or the examinations of prisoners appeared to be irregularly or improperly taken, it should be his duty to call the attention of the clerk of the magistrates to such irregularity or impropriety, with a view to preventing its recurrence in future.

"In all cases of difficulty, and where any question arose as to whether the prosecution ought to be proceeded with, it should be his duty to submit the depositions, &c., to the Crown counsel.

"Wherever he was of opinion that any prosecution ought not to be proceeded with, either because no offence had been committed, or for want of any sufficient evidence to make out a case, and the Crown counsel sanctioned such opinion, it should be his duty to give notice to the prosecutor and witnesses, and the attorney, not to proceed any further with such prosecution, and not to attend at the assizes or sessions; and also, in case the prisoner was in custody to order the gaoler to discharge him; and in case he was on bail, to give him notice that he need not attend at the assizes or sessions, as far as such particular prosecution was concerned.

"Where anything was done by his directions or under his advice which did not fall within the ordinary course of the prosecution, it should be his duty to ascertain the expense thereof, and, where practicable, to make an arrangement beforehand for its being done on the most reasonable terms which could be obtained.

"Where any public nuisance was created, it should be his duty to give notice to the parties forthwith to abate the same; and in case of their neglect or refusal, it should be his duty to institute a prosecution against the parties.

"Wherever he had information of the maltreatment of any child, apprentice, servant, idiot, or insane person, or the like, it should be his duty to have the case brought before the magistrates.

"In all cases where there was no prosecutor, or where the prosecutor did not think fit when before the magistrate to name his own attorney to conduct the prosecution, it should be his duty to direct the proceedings of the attorney nominated by the magistrates; and so likewise in any case where the magistrates, in their discretion, did not think that the prosecutor was a fit person to have the control over the prosecution.

"He might also be vested with authority to arrange the time at which witnesses in particular cases should come to the assizes or sessions, and as to the means for their accommodation during their sojourn there, and anything else which might tend to facilitate the proceedings or lessen the expenses of prosecutions.

"It should also be his duty to direct the police to take any measures which in his judgment might

tend to the detection and punishment of well-known thieves and receivers of stolen property.

"His duties should commence with the first information of an offence, and continue until the case had been finally disposed of; and it should be his special duty to elicit the truth, not merely on the part of the prosecution, but on that of the prisoner also. In fact, he ought to be a minister of justice. He ought, therefore, from the beginning to the end, to keep his attention alive to whatever might be conducive to the real ends of justice."

Such are the principal duties which Mr. Greaves suggests such an officer ought to perform; and although at first sight they may appear numerous yet he thinks there is no doubt that in most counties they might very well be performed by a single officer. though in large counties, where there is a great amount of crime, a second officer would be required.

Nor, he contends, can it be doubted that such an officer would produce a very great amount of good. He would in no way interfere with any of the usual parts of criminal procedure, or check their working; on the contrary, he would stimulate their energies, and afford the most material and essential assistance and co-operation just on those occasions where they are most of all needed. Prosecutors and witnesses would find in him a most useful and efficient adviser, and no one can doubt that even the attorneys themselves, on many occasions, would be very desirous of seeking the advice of such an officer, and of relieving themselves by that means from the unpleasant position in which they are now placed. In serious cases it often occurs that points of difficulty and doubt arise, and at present the attorney is generally obliged to act entirely on his own judgment; and peradventure, after having exercised the best discretion in his power, he may at the trial be blamed for the course he has adopted, and perchance the costs of some of the witnesses may be disallowed, which, if he happens to have a poor client (as is commonly the case) must either be paid out of his own pocket or not at all.

In serious cases, also, such an officer would sometimes prevent the prosecution from failing, and Mr. Greaves mentions the following instance in support of his opinion.

"A case of murder by poison occurred, in which it was very material to prove that the prisoner had bought the poison at a particular shop; one witness only was brought to prove that fact; but a doubt occurring in consultation as to his evidence, a little girl, who was in the shop at the time, was sent for by the advice of counsel. On cross-examination the witness completely broke down; but the little girl proved the sale of the poison in so clear a manner as to leave not a particle of doubt of the fact, and the prisoner was convicted. Another case of poisoning was tried at the same place within a year afterwards, and here a single witness was called to negative a statement of the prisoner, in which he failed, and the prisoner was acquitted, though any

number of other witnesses might have been called and negated the statement. In each of these cases the attorneys had only the one witness present, because they feared to be blamed for bringing an unnecessary witness. Had there been a public officer, such as is suggested, it cannot be doubted that he would have taken care that so important a point should not be left in doubt."

Mr. Greaves observes that such cases show how essential it is to have some *superintending mind* to guide the course of the prosecution. It follows, however, as a necessary consequence, that such an officer must be a person of great intelligence and activity, and of considerable experience in criminal prosecutions, otherwise his duties will not be adequately performed; and it is equally clear that he must not have the duties of any other office to perform which can interfere at any time with the proper discharge of his duties relating to criminal proceedings. Mr. Greaves then suggests that—

"The appointment of such officer should be vested in the Crown, but his salary should be paid by the district for which he was appointed; for that district would reap the benefit of his services, and therefore ought to pay for them. His appointment ought to be during good behaviour, and his office ought in no way to be subject to the control or liable to the interference of the magistrates. The amount of his salary should depend on the time occupied in the discharge of his duties. In some districts, where there was a great quantity of criminal business, his whole time might be required to be devoted to it. In others, a portion of his time only, and his salary ought to be fixed accordingly. The salary ought to be determined by the Government, and not by the magistrates in sessions, or, if they were permitted to report on the amount, the Government should have a discretionary power to adopt or alter it."

Mr. Greaves then recommends that, in important cases, the opinion of *Crown counsel* should be obtained on the mode of indicting, and on points of evidence; and for this purpose he suggests that some one counsel in London should be appointed, to whom the district officers should refer in cases of difficulty. In such officer might be vested the responsibility in doubtful cases of stopping a prosecution or proceeding therein. It is urged in favour of such sole appointment, that it would tend to produce uniformity of procedure; and from the large experience which the officer would acquire, he might advise on proposed amendments of the criminal law and aid in equalizing the punishment of offenders. It is not suggested that such counsel should personally conduct any case in court.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### MARRIAGE AND REGISTRATION.

(19 & 20 Vict. c. 119.)

1. No notice of marriage to be read or published before Poor Law Guardians, or be transmitted to the clerk of such guardians.

2. Every notice of marriage to be accompanied by a solemn declaration, by one of the parties, that there is no lawful hindrance to such marriage, &c.; persons making wilfully false declarations to suffer the penalties of perjury.
8. Form of notice of marriage.
4. Notice of marriage without licence to be affixed in Superintendent Registrar's office.
5. Notice of marriage by licence not to be suspended in the office of the Superintendent Registrar.
6. In case of marriage by licence, notice to be given to the Superintendent Registrar of one district shall be sufficient.
7. Notice of marriage without licence may be given in Ireland, if one of the parties reside there.
8. Certificate of proclamation of banns in Scotland as to party resident there equivalent to Superintendent Registrar's certificate.
9. In cases of marriage by licence, certificate of the notice thereof may be given by the Superintendent Registrar (unless the marriage be forbidden), and thereupon the marriage may be solemnized.
10. Form of licence for marriage.
11. Mode of solemnizing marriages in registered buildings.
12. Persons desirous may add the religious ceremony ordained by the Church.
13. Superintendent Registrar to whom notice is given may grant licence for marriage (under 3 & 4 Vict. c. 72) in a district in which neither of the parties resides.
14. Superintendent Registrar may grant licence for marriage to be solemnized in registered building out of the district wherein the parties reside.
15. Registrar General may appoint registrars of marriages; and appointment of registrars of marriages by Superintendent Registrars to be subject to the approval of the Registrar General.
16. Registrar of Marriages may appoint a Deputy.
17. Proof of the observance of this act and of the recited acts, matters not necessary to the validity of marriages.
18. Penalty on making false declaration, or giving false notices.
19. In case of fraudulent marriages, the guilty party to forfeit all property accruing from the marriage, as in 4 G. 4, c. 76.
20. Nothing to alter, &c., provisions of existing acts, except where at variance with this act.
21. Marriages of Quakers or Jews may be solemnized by licence.
22. Registrar General to furnish marriage register books and forms to each certified secretary of a Synagogue of British Jews.
28. Marriages under this act good and cognizable.
24. Recites the act of 15 & 16 Vict. c. 36; Registrar General to allow searches to be made, and

give extracts from the returns of certified places of worship made to him thereto, on payment of specified fees.

25. Act not to extend to Ireland or Scotland.

26. Commencement of act.

The following are the title, preamble, and sections of the act :—

An Act to amend the Provisions of the Marriage and Registration Acts. [July 29, 1856.]

RECIPIING the 6 & 7 W. 4, c. 85; 1 Vict. c. 22; and 3 & 4 Vict. c. 72; and that it is expedient to alter and amend the provisions of the said recited acts, so far as is hereinafter provided; it is therefore enacted as follows :—

1. In case of any party intending marriage under the provisions of any of the said recited acts or of this act, no notice of such intended marriage shall be read or published before the guardians of any poor law union or parish or place, or be transmitted by any Superintendent Registrar to the Clerk of any such guardians.

2. In case any party shall intend marriage, under the provisions of any of the said recited acts or of this act, the party so intending marriage shall, at the time of giving to the Superintendent Registrar or respective Superintendent Registrars, as the case may be, the notice required by the said recited acts or either of them, make and sign or subscribe a solemn declaration in writing, in the body or at the foot of such notice, that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that the parties to the said marriage, in case the marriage is intended to be had without licence, have, for the space of seven days immediately preceding the giving of such notice, had their usual place of abode and residence within the district of the Superintendent Registrar or respective Superintendent Registrars to whom such notice or notices, as the case may be, shall be so given; or, in case such marriage is intended to be by licence, that one of the said parties hath for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence within the district of the Superintendent Registrar to whom such notice shall be so given; and when either of the parties intending marriage, and not being a widower or widow, shall be under the age of twenty-one years, the party making such declaration shall further declare that the consent of the person or persons whose consent to such marriage is by law required has been given, or (as the case may be) that there is no person whose consent to such marriage is by law required; and every declaration so made as aforesaid shall be signed and subscribed, by the party making the same, in the presence of the Superintendent Registrar to whom the notice of marriage containing such declaration is given, or in the presence of his deputy, or of some registrar of births and deaths or of marriages for the district in which the party giving such notice resides, or of the deputy of such registrar, who shall respectively attest the same by adding thereto his name, description, and place of abode; and no certificate or licence for marriage shall be issued or granted pursuant to any such notice as aforesaid unless the said notice be accompanied by such solemn declaration duly made and signed or subscribed and attested as aforesaid; and every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false

notice for the purpose of procuring any marriage under the provisions of any of the said recited acts or this act, shall suffer the penalties of perjury.

3. Every notice of marriage which shall be given under the provisions of any of the said recited acts or of this act, after this act shall have come into operation, shall be in the form of schedule (A) to this act annexed, or to the like effect; and in every case where the marriage is intended to be had and solemnized under the provisions of the 3 & 4 Vict. c. 72, such notice shall, in addition to the several particulars comprised in the said schedule, contain the declaration required to be made by one of the parties to such intended marriage, pursuant to the second section of the said last-mentioned act; and the Superintendent Registrar to whom any such notice of marriage shall be so given shall forthwith enter the particulars and the date thereof, and the name of the party giving the same, into the Marriage Notice Book; and for every such entry the Superintendent Registrar shall be entitled to have a fee of 1s.

4. In case any party shall intend marriage without licence under the provisions of any of the said recited acts or of this act, the Superintendent Registrar, to whom notice of such intended marriage has been given shall cause the notice of marriage, or a true and exact copy thereof, as entered in the Marriage Notice Book, under the hand of such Superintendent Registrar, to be suspended or affixed in some conspicuous place in the office of the said Superintendent Registrar during 21 successive days next after the day of the entry of such notice in his "Marriage Notice Book," before any marriage shall be solemnized in pursuance of such notice, and after the expiration of 21 days next after the day of the entry of such notice in his "Marriage Notice Book" the Superintendent Registrar shall issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in schedule (B) to this act annexed, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same Superintendent Registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited acts by some person or persons authorised in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorised in that behalf; and for every such certificate the Superintendent Registrar shall be entitled to have and receive a fee of 1s.; and at any time within 3 calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the authority of the said certificate; and every Superintendent Registrar's certificate for marriage duly issued under the provisions of this act shall have the same force, validity, and effect as the like certificate issued under the provisions of the said recited acts or either of them would have had in case this act had not been passed.

5. In case any party shall intend marriage by licence under the provisions of any of the said recited acts or of this act, notice of such intended marriage shall not be suspended in the office of the Superintendent Registrar, but the party giving the

same shall state therein that such marriage is intended to be celebrated by licence.

6. In any case of marriage intended to be solemnized by licence, under the provisions of either of the said two firstly recited acts or of this act between parties both of whom do not dwell in the same Superintendent Registrar's district, it shall not be required that notice of such intended marriage shall be given to more than one Superintendent Registrar, but a notice to the Superintendent Registrar of the district in which one of the parties so intending marriage resides shall be sufficient; and it shall not be required that the said notice shall state how long each of the said parties has resided in his or her dwelling place, but only how long the party residing in the district in which the notice is given has so resided.

7. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited acts or of this act shall dwell in Ireland, the party so dwelling in Ireland shall give notice in the form there used in that behalf or to the like effect to the registrar of the district in Ireland within which such party shall have dwelt for not less than seven days then next preceding, and shall state therein the name and surname and the profession and condition and age of each of the parties intending marriage, and also the dwelling place of each of them, and the time, not being less than seven days, during which he or she shall have dwelt therein, and also the church or other building in which the marriage is to be solemnized, provided that if either party shall have dwelt in the place stated in the notice as his or her dwelling place more than one month it may be stated that he or she hath dwelt therein one month and upwards; and such notice shall be dealt with in the manner and such certificate for marriage shall be given by such registrar in the mode respectively prescribed in the 7 & 8 Vict. c. 81, intituled an act for marriages in Ireland, and for registering such marriages, as amended by another act passed in the session holden in the 9 & 10 Vic. c. 72, intituled An Act to Amend the Act for Marriages in Ireland, and for registering such Marriages, provided that in such case the certificate for marriage shall not be issued before the expiration of twenty-one days next after the day of the entry of such notice, as in the first of the said two last-mentioned acts is provided; and from and after the issuing of such certificate the production of the same to any person duly authorised under the provisions of this act to solemnize a marriage shall be as valid and effectual for authorising such person to solemnize such marriage as the production of a certificate for marriage of as Superintendent Registrar of a district in England would be under any or either of the said three firstly herein-before recited acts, if the party giving such notice were resident within such district, and the other party to such intended marriage were also resident within another Superintendent Registrar's district in England; and where marriages have since the passing of the said act for marriages in Ireland, and for registering such marriages, been solemnized in England between parties, one of whom was resident in Ireland, under certificates, of which one was the certificate of the registrar of the district in Ireland within which one of the parties had dwelt for not less than seven days, and the other the certificate of the Superintendent Registrar of the district in England within which the other party had dwelt for

not less than seven days, such marriages are hereby declared to be and to have been valid in the same manner as if the parties had been respectively resident for not less than seven days in the respective districts of two Superintendent Registrars in England, and like certificates had been issued by both such Superintendent Registrars.

8. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited acts or of this act, shall dwell in Scotland, a certificate of proclamation of banns in Scotland, under the hand of the Session Clerk of the parish in which such proclamation shall have been made shall, when produced to any person duly authorised under the provisions of this act to solemnize a marriage, be as valid and effectual for authorising such person to solemnize such marriage as the production of a certificate for marriage of a Superintendent Registrar of a district in England would be, under any or either of the said three firstly recited acts, in reference to a party resident within such district.

9. Every Superintendent Registrar receiving notice of an intended marriage to be solemnized by licence as aforesaid shall, after the expiration of one whole day next after the day of the entry of such notice in his "Marriage Notice Book," issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in the said schedule (B.) to this act annexed, and also a licence to marry, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same Superintendent Registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited acts by some person or persons authorized in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorised in that behalf; and for every such certificate the Superintendent Registrar shall be entitled to have and receive a fee of 1s.; and at any time within three calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the authority of the said licence; and every Superintendent Registrar's certificate and licence for marriage duly issued under the provisions of this act shall have the same force, validity, and effect as the like certificate and licence issued under the provisions of the said recited acts or either of them would have had in case this act had not been passed.

10. The form of a licence for marriage so to be granted as aforesaid to any party or parties, by the Superintendent Registrar of any district as aforesaid, shall be in the form or to the effect of the licence set forth in schedule (C.) to this act annexed; and for every such licence the Superintendent Registrar granting the same shall be entitled to have and receive of the party requiring the same the sum of £1 10s. over and above the amount paid for the stamps necessary on granting such licence.

11. No such marriage as aforesaid shall be solemnized in any such registered building without the consent of the minister or of one of the trustees, owners, deacons, or managers thereof, nor in any registered building of the Church of Rome without the consent of the officiating minister thereof, nor in any church or chapel of the United Church of En-

gland and Ireland without the consent of the minister thereof, nor in such latter case by any other than a duly qualified clergyman of the said United Church, or with any other forms or ceremonies than those of the said United Church, any statute or statutes to the contrary notwithstanding.

12. If the parties to any marriage contracted at the registry office of any district conformably to the said recited acts or any of them, or to the provisions of this act, shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the Church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention so to do; and such clergyman or minister, upon the production of their certificate of marriage before the Superintendent Registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong: provided always, that no minister of religion who is not in holy orders of the United Church of England and Ireland shall under the provisions of this act officiate in any church or chapel of the United Church of England and Ireland; but nothing in the reading or celebration of such service shall be held to supersede or invalidate any marriage so previously contracted, nor shall such reading or celebration be entered as a marriage among the marriages in the parish register: provided also, that at no marriage solemnized at the registry office of any district shall any religious service be used at such registry office.

13. When any marriage is intended to be solemnized between parties not of the Society of Friends commonly called Quakers, or not professing the Jewish Religion, by licence under the provisions of the 8 & 4 Vict. c. 72, in a registered building situated in a district within which neither of the parties resides, it shall be lawful for the Superintendent Registrar to whom notice of such intended marriage shall have been given to grant to the party applying for the same a licence for such marriage to be solemnized in the registered building stated in such notice; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual to all intents and purposes as if the same had been granted by the Superintendent Registrar of the district in which the registered building wherein the marriage is intended to be solemnized is situated.

14. When any marriage is intended to be solemnized, under the provisions of any of the before-recited acts or of this act, in the usual place of worship of the parties so intending marriage, or one of them, and such place of worship shall be a registered building situated out of the district of their, his, or her residence, it shall be lawful for the Superintendent Registrar or respective Superintendent Registrars to whom notice of such marriage shall have been given to grant to the party applying for the same a licence or certificate, as the case may be, for such marriage to be solemnized in the registered building stated in such notice, provided such building be situated not more than two miles beyond the limits of the district in which the notice of such marriage has been given, and the party giving notice of such marriage shall at the time of giving the same state therein, in addi-

tion to the description of the building in which the marriage is to be solemnized, that it is the usual place of worship of one of the parties, and shall also state the name of the party whose usual place of worship it is; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual, to all intents and purposes, as if the same had been granted by the Superintendent Registrar of the district in which the registered building wherein the marriage is intended to be solemnized is situated.

15. The Registrar General shall have power and he is hereby authorised from time to time to appoint, by writing under his hand, such person or persons as he may think fit, with such qualifications as the said Registrar General by any general rule shall have declared to be necessary, to be a registrar or registrars of marriages within the district of any Superintendent Registrar; and every appointment to be hereafter made by any Superintendent Registrar of any person or persons to be a registrar or registrars, for the purpose of being present at marriages to be solemnized under and by virtue of any or either of the said recited acts or of this act, shall be by writing under the hand of such Superintendent Registrar, and shall be subject to the approval of the Registrar General.

16. Every registrar of marriages, already appointed or hereafter to be appointed, shall be and he is hereby empowered, subject to the approval of the Registrar General, to appoint, by a writing under his hand, a fit person to be and to act as his deputy, in case of the illness or unavoidable absence of such registrar; and every such deputy, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties in the said recited acts or any or either of them given, imposed, and contained concerning registrars of marriages; and every such deputy shall hold his office during the pleasure of the registrar by whom he was appointed, but shall be removable by the Registrar General; and every registrar of marriages shall be civilly responsible for the acts and omissions of his deputy; and in case any registrar of marriages shall die, or otherwise cease to hold his office, his deputy shall become the Registrar of Marriages in his place until the appointment of another Registrar of Marriages shall have been made, and notified to him by the Superintendent Registrar or by the Registrar General, and shall, while continuing such Registrar, have the same powers and duties and be subject to the same provisions and penalties as any other registrar of marriages.

17. After any marriage shall have been solemnized, under the authority of any of the said recited acts or of this act, it shall not be necessary in support of such marriage to give any proof of the actual dwelling or of the period of dwelling of either of the parties previous to the marriage within the district stated in any notice of marriage to be that of his or her residence, or of the consent to any marriage having been given by any person whose consent thereto is required by law, or that the registered building in which any marriage may have been solemnized had been certified according to law as a place of religious worship, or that such building was the usual place of worship of either of the parties, nor shall any evidence be given to prove the contrary in any suit or legal proceedings touching the validity of such marriage; and all marriages which heretofore have been or which hereafter may be had or solemnized, under the authority of any of the said recited acts or of this act, in any building or place

of worship which has been registered pursuant to the provisions of the said act passed in the 6 & 7 Wm. 4, c. 85, but which may not have been certified as required by law, shall be as valid in all respects as if such place of worship had been so certified.

18. Any person who shall knowingly or wilfully make any false declaration or sign any false notice required by this act for the purpose of procuring any marriage, and every person who shall forbid the granting by any superintendent registrar of a certificate for marriage by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false shall suffer the penalties of perjury.

19. If any valid marriage shall be had, under the provisions of any of the said recited acts or this act, by means of any wilfully false declaration, notice, or certificate made or obtained by either party to such marriage as to any matter in which a solemn declaration, notice, or certificate is required, it shall be lawful for her Majesty's Attorney-General or Solicitor-General to sue for a forfeiture of all the estate and interest in any property accruing to the offending party by such marriage, and the proceedings thereupon and the consequences thereof shall be the same as are provided in the like case with regard to marriages solemnised by licence between parties under age according to the rites of the church of England in the 4 G. 4, c. 76.

20. Except where the provisions of the said recited acts are expressly altered by or are at variance with the provisions of this act, nothing herein contained shall alter, repeal, or affect, or be construed so as in any manner to alter, repeal, or affect any of the several provisions and clauses contained in the same acts or any of them, but, except as aforesaid, the same provisions and clauses respectively shall be and remain in full force and effect as if this act had not been passed; and this act shall, except as aforesaid, be considered as incorporated with the same provisions and clauses, and be construed in connection therewith; provided that, save as hereinafter mentioned, none of the provisions of this act shall limit or alter, or be construed to limit or alter, the privileges of persons belonging to the Society of Friends commonly called Quakers, or of persons professing the Jewish religion, or impose on either of such bodies any obligations beyond such as are enacted in either of the said recited acts.

21. Any marriage according to the usages of the Society of Friends, commonly called Quakers, or to the usages of persons professing the Jewish religion respectively, where the parties thereto are both members of the said society, or both persons professing the Jewish religion respectively, may be solemnized by licence (which licence the superintendent registrar to whom notice of the intended marriage shall have been given is hereby authorised to grant, in the form or to the effect set forth in the said schedule (C.) to this act annexed), as effectually in all respects as if such marriage were solemnized after the issue of a certificate by such superintendent registrar in the manner provided by the said recited acts or any of them; and the provisions in this present act contained in relation to the solemn declaration to be made by the party intending marriage, and to the statement to be contained in the notice of such intended marriage that such marriage is intended to be celebrated by licence, and to the notice to be given of any such intended marriage by licence, and to the giving of

certificates in the form or to the effect set forth in schedule (B.) to this act annexed, and to the fee and stamp to be paid for such licence, shall be applicable in all respects to every such marriage to be solemnised by licence according to the usages of the said society or to the usages of persons professing the Jewish religion respectively,

22. The Registrar-General shall furnish or cause to be furnished to the person whom 20 householders professing the Jewish religion, and being members of the West London Synagogue of British Jews, shall certify in writing under their hands to the Registrar General to be the Secretary of the West London Synagogue of British Jews, and also to every person whom such secretary shall in like manner certify to be the secretary of some other synagogue of not less than 20 householders professing the Jewish religion, and being in connection with the West London Synagogue, and having been established for not less than one year, a sufficient number in duplicate of marriage register books and forms for certified copies thereof; and every secretary of a synagogue to whom such books and forms shall be furnished under this act shall perform the same duties in relation to the registration of marriages between persons professing the Jewish religion as under an act passed in the session of Parliament held in the 6 & 7 Wm. 4, c. 86, intituled "An Act for Registering Births, Deaths, and Marriages in England," are to be performed by the secretary of a synagogue, to whom marriage register books and forms for certified copies thereof have been or shall be furnished under that act.

23. Every marriage solemnised under any of the said recited acts or of this act shall be good and cognisable in like manner as marriages before the passing of the first-recited act according to the rites of the church of England.

24. And whereas, in pursuance of the 15 & 16 Vic. c. 86, intituled "An Act to amend the Law relating to the Certifying and Registering Places of Religious Worship of Protestant Dissenters," the registrars of the several dioceses and archdeaconries, and the clerks of the peace of the several counties, ridings, divisions, cities, and boroughs in England and Wales, did, in the year one thousand eight hundred and fifty-two, make and transmit, as thereby required, to the Registrar-General of Births, Deaths, and Marriages in England, duly verified returns of all places within the limits of their respective jurisdictions which previous to and up to the time of the passing of the last-mentioned act had been certified according to law and registered or recorded as places of meeting for religious worship: And whereas the total number of such places of meeting so returned to the said Registrar General pursuant to the said act is 54,804, and it is expedient that, for facilitating the proof of such places having been duly certified and registered or recorded as aforesaid, the Registrar General should be empowered by law to allow searches to be made in the said returns, and to give certified copies thereof and extracts therefrom: Be it further enacted as follows:—The Registrar General, on payment to him of the several fees hereinafter mentioned, shall allow searches to be made in the returns so made to him as aforesaid, and shall give to any person demanding the same a certified copy thereof or extract therefrom with respect to any place of meeting for religious worship contained therein; and every such certified copy or extract shall be sealed or stamped

with the seal of the General Register Office, and when so sealed or stamped as aforesaid, if tendered in evidence upon any trial or other judicial proceeding in any civil or criminal court, shall be received as evidence of the place of meeting therein mentioned or described having been at the time in that behalf therein stated duly certified and registered or recorded as by law required, without any further or other proof of the same; and the Registrar General shall be entitled to demand and receive for every search in the said returns extending over a period of not more than ten years, the sum of 1s., and for every additional period of 10 years the sum of 6d., and the further sum of 2s. 6d. for every single certified copy or extract.

25. Save as herein expressly provided, this act shall not extend to Ireland or Scotland.

26. This act shall come into operation on the 1st January, 1857, and none of the provisions thereof shall take effect previous to that day.

The forms given in the schedule to the act are omitted, as printed copies will be supplied by the proper officer.

## COURT OF BANKRUPTCY RETURNS.

### MESSENGERS' ANNUAL INCOMES.

#### London.

		£	s.	d.
J. D. Austin ... ..	Receipts	8,070	10	11
	Payments	1,960	8	9
		£1,110	2	2

T. E. Stubbs ... ..	Receipts	8,652	18	4
	Payments	2,686	17	8
		£1,016	1	1

James Cooper... ..	Receipts	4,098	9	9
	Payments	2,783	1	0
		£1,860	8	9

T. Hamber ... ..	Receipts	8,681	18	10
	Payments	2,891	7	1
		£1,240	6	9

James Johnstone ... ..	Receipts	5,082	8	8
	Payments	8,707	8	8
		£1,875	5	0

#### Birmingham.

F. O. Badham ... ..	Receipts	3,419	19	8
	Payments	2,425	1	1
		£994	18	7

W Bodill ... ..	Receipts	2,237	14	0
	Payments	1,662	19	10½
		£574	14	1½

#### Bristol.

J. Crocker ... ..	Receipts	987	17	2
	Payments	567	1	5
		£420	15	9

H. Turner ... ..	Receipts	1,067	13	4
	Payments	507	5	6
		£560	7	10

#### Exeter.

J. Bullivant ... ..	Receipts	1,092	10	9
	Payments	626	19	2
		£465	11	7

#### Leeds.

T. W. Needell ... ..	Receipts	2,456	6	4
	Payments	1,564	3	5
		£892	2	11

C. C. Templar ... ..	Receipts	2,267	10	6
	Payments	1,352	8	6
		£915	2	0

#### Manchester.

T. J. Millar ... ..	Receipts	1,385	14	4
	Payments	804	4	0
		£581	10	4

#### Newcastle-upon-Tyne.

J. Reeves ... ..	Receipts	1,706	17	4
	Payments	1,047	12	0
		£659	5	4

[The large salaries received by these messengers are occasioned, in a considerable degree, by their transacting business which previously was done by the clerks in the attorneys' offices. Whether the disbursements they charge are legitimate and reasonable we know not; but the net profits, according to their own admissions, are larger than those of professional men.—ED.]

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION BY CESTUIS QUE TRUSTENT OF COSTS INCURRED BY TRUSTEES.

It appeared that upon the marriage of Mr. and Mrs. Barnard certain property was settled upon the usual trusts for themselves and their children. Mr. Hallett, who had been employed as solicitor of the trust, had received part of the trust moneys, and had been the solicitor in a suit in which Mr. Newman and Mr. Ainger were appointed new trustees.

Mr. Ainger died in 1848, and Mr. Newman in 1852, but the cestuis que trustent alleged that they were totally unacquainted with Mr. Newman, and where he died, and who were his legal personal representatives. They also stated that they had

repeatedly applied to Mr. Hallett to afford them such information, with a view to obtain an order for the taxation of the trust bills of costs and the delivery of the trust accounts, at the instance of the parties entitled at law to require the payment of what should be found due on the balance of the accounts and the taxation of the bills of costs, and, if necessary, to obtain the appointment of new trustees for that purpose, but that Mr. Hallett refused to afford them any such information.

The cestuis que trustent under the settlement accordingly presented a petition under the 6 & 7 Vic. c. 73, s. 89, for the taxation of the trust bills of costs, but which were also mixed up with other bills against Mr. Barnard personally, and also praying the payment by Mr. Hallett of the balance of the trust fund to the petitioners.

The *Master of the Rolls* said: "It is clear that an order for taxation must be made, subject to the question of costs, and to which I will read the affidavits.

"It is admitted by Mr. Palmer that I cannot order the money found due from the solicitor to be paid to the petitioners, for if it were paid over, that would be no indemnity to the solicitor against any breach of trust.

"If any balance should appear to be due from the solicitor in respect of the trust estate, I must direct it to be paid into court to an account to be intitled, 'The Trusts of the Marriage Settlement of Mr. and Mrs. Barnard.' I will afterwards state what I will do as to costs."

His Honour subsequently said that he was not satisfied as to the conduct of either party, and though he had somewhat wavered in opinion on the matter, he had ultimately come to the conclusion, after taking into consideration the conflict of the evidence, that the proper course would be to give no costs to either side of the petition.

In re Hallett, 21 Beav. 250.

## LAW OF COSTS.

UNDER COUNTY COURTS ACTS—CAUSE OF ACTION IN JURISDICTION WHERE DEFENDANT DWELLS, AND PARTIES RESIDE WITHIN TWENTY MILES OF EACH OTHER.

THE plaintiff, a butcher, resided and carried on his business at Uxbridge, in Middlesex, and within the jurisdiction of the Uxbridge County Court. The defendant resided near Chalfont, in Buckinghamshire, and within the jurisdiction of the High Wycombe County Court. Most of the goods for which this action was brought were ordered and delivered at Uxbridge, but some of them, though ordered there, were delivered to the defendant within the jurisdiction of the High Wycombe County Court. The plaintiff had obtained a rule nisi to tax his costs under the 9 & 10 Vic. c. 95, s. 128.

*Jervis*, C. J., said:—"In the course of the argument, reliance was placed on the part of the plaintiff upon a case of *Dodd v. Wigley*, 7 Com. B. 106, where this court seemed disposed to decide, but did not actually decide, that, where some of the goods were delivered, or a portion of the work done, within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, the case is brought within the 2nd exception of the 128th section of the 9 & 10 Vic. c. 95. But the Court of Exchequer, in *Grimbley v. Aytrold*, 1 Exch. 479; 3 D. and L.

701; and *Wood v. Perry*, 8 Exch. 442; 6 D. and L. 194, laid it down, that, where a tradesman has a bill against a party for any amount in which the items are so connected together that it appears that the dealing 'is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one continuous demand, the whole together forms but one cause of action, and cannot be divided; or, in other words, that 'cause of action' in the statute meant *cause of one action*, and was not to be limited to an action upon one separate contract; and they held, that, if any one item in such a bill arises within the jurisdiction of a county court, the cause of action 'in some material point' arises within that jurisdiction, and the superior court has not concurrent jurisdiction under the 128th section. Although it is undoubtedly extremely difficult to reconcile that view with the hypotheses which were forcibly put by Mr. Honyman in the course of his argument, we think it a convenient rule, and one which it will be useful to abide by, seeing that it operates strict justice, and insures uniformity of decision on a question of considerable importance. We think, therefore, we must hold ourselves governed by the decision of the Court of Exchequer in *Grimbley v. Aytrold* and *Wood v. Perry*, and that this must be considered as 'one cause of action' arising upon the butcher's bill. Then, is it true, as Mr. Honyman suggests, that a material part of the cause of action here did not arise within the jurisdiction of the county court of High Wycombe, within which the defendant resided, but only a part of the cause of action? We think that, though strictly and technically it is true that a part only of the cause of action—viz., the delivery of certain joints of meat, took place within the jurisdiction of the High Wycombe County Court; yet, as the whole is to be taken as one cause of action, a material part of that cause of action arose within the jurisdiction of the High Wycombe County Court, and therefore that court had jurisdiction. For these reasons we think the rule should be discharged."

On the question of the costs of the rule, *Jervis*, C. J., said: "We have considered that matter, and we think there should be no costs. We incline to think the plaintiff, after the cause of *Dodd v. Wigley*, which certainly did seem to be a little in his favour, had fair ground for coming to the court."

*Bonsey v. Wordsworth*, 18 Com. B. 825.

## CONSTRUCTION OF EQUITY JURISDICTION IMPROVEMENT ACT.

PRODUCTION OF DOCUMENTS ON EXAMINATION OF WITNESS AS TO THEIR HANDWRITING.

THIS was an appeal from the decision of V. C. *Kinnersley* (reported 2 Drewry, 205), refusing a motion on behalf of the plaintiff, seeking the production of nine letters and two deeds, which had been handed, on the defendant's behalf, to a witness examined on the part of the defendant before a special examiner, for the purpose of verifying the handwriting.

L. J. *Knight Bruce* said: "They are documents as to which not a question was asked on the part of the defendant, whose witness he was, except such questions as merely led to the proof of examination or handwriting. Now if these documents, or any of them, were in the possession or power of the defendant himself, the 18th section of the act would prevent any possibility of injustice in the suit with regard to them. I examined that section when it was uncer-



tain—as it was for some time—whether some of these documents were not in the possession or power of the defendant who produced the witness. It is now stated by a solicitor of the court—and I have no doubt accurately—that not one of them is so, but that they are all in the possession (in every sense of the expression) of the witness who did produce them.

“The documents have all been ascertained, I think, and therefore if the plaintiff shall wish to see them, all he has to do is to serve the witness with a *subpoena duces tecum* on his behalf, and the documents, if in their nature evidence, will be produced and read. Supposing, however, that not to be done, and supposing the cause taken to a hearing in its present condition, the court, at the hearing, will have the power to prevent injustice by directing further examination or the re-examination of any witnesses.

“It is not denied that, according to the established practice of the court before the statute, this application could not succeed. But it has been said, that the 31st section of the act makes so important a change in the constitution—if I may use the expression—and the course and practice of the court, as to render that right which otherwise would have been wrong. Now I certainly am not prepared to say that this was the intention, or is the true construction, of the act, which says, that ‘the witnesses so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination, and re-examination shall be conducted, as nearly as may be, in the mode now in use in courts of common law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause.’ I do not assent to the proposition that the true interpretation of this act renders it incumbent upon the court, as a matter of course, to grant the application, which is not made upon any special ground. If, indeed, in the cross-examination of the witness there had appeared reasonable ground for doubt or inquiry whether he was not mistaken as to the handwriting—whether all the documents were genuine—whether he had sufficient means of speaking to the handwriting—I can conceive that the court would have the power to compel their production. The hands of the court cannot be so fettered, cannot be so weak for the administration of justice in a reasonable manner, as such an argument would imply. Here the witness has not been cross-examined; the time of cross-examination, the time of bringing forward any doubt or objection, has not arrived; and we are asked without any such information, without any such guide, but as a mere matter of right, and of course, to compel the production and inspection of these documents. In my opinion, as there was no such right before the act of Parliament, so there is none since.

“Reserving myself, therefore, wholly upon the question what it may be proper to do on the cross-examination of the witness, if there shall be a cross-examination, or on other materials produced in any way, I decline to make the order as a matter of course, it being as a mere matter of course that we are asked to make it.”

*Lord v. Colvin, 5 De G. M’N. and G. 47.*

## CLERKS OF THE PEACE OF ENGLAND AND WALES, 1856.

ENGLAND.		
County.		Name.
Bedford ... ..	...	Theod. Pearse.
Berks ... ..	...	G. B. Morland.

Bucks ... ..	...	A. Tindal.
Cambridge ... ..	...	H. R. Evans.
Isle of Ely ... ..	...	C. Metcalf.
Chester ... ..	...	C. W. Potts (deputy).
Cornwall ... ..	...	E. Coode.
Cumberland ... ..	...	Thomas H. Hodgson.
Derby ... ..	...	John Barber.
Devon ... ..	...	Thomas Pring.
Dorset ... ..	...	William Ffooks.
Durham ... ..	...	John Tiplady (deputy).
Essex ... ..	...	William Gibson.
Gloucester ... ..	...	George Riddiford (deputy).
Hants ... ..	...	W. D. Farr.
Hereford ... ..	...	John Clave.
Hertford ... ..	...	T. H. Bosworth.
St. Albans ... ..	...	T. H. Bosworth.
Huntingdon ... ..	...	B. A. Greene.
Kent ... ..	...	H. A. Wildes.
Lancaster ... ..	...	Gorsts & Birchall (deputy).
Letchester ... ..	...	W. Freer.
Lincoln :—		

(Parts of Holland). J. R. Carter.

(Parts of Kesteven). M. P. Moore.

(Parts of Lindsey). J. H. Holliday.

Middlesex ... ..	...	A. G. Maude (deputy).
Monmouth ... ..	...	C. Prothero.
Norfolk ... ..	...	Robert W. Parmeter.
Northampton ... ..	...	H. P. Markham.
Peterborough ... ..	...	William Lawrance.
Northumberland ... ..	...	William Dickson.
Nottingham ... ..	...	T. F. A. Barnaby (deputy).
Oxford ... ..	...	J. M. Davenport.
Rutland ... ..	...	B. Adam (deputy).
Salop ... ..	...	John Loxdale.
Somerset ... ..	...	Edwin Lovell.
Stafford ... ..	...	R. W. Hand (deputy).
Suffolk ... ..	...	J. H. Borton.
Surrey ... ..	...	W. Greig.
Sussex ... ..	...	W. V. Langridge.
Warwick ... ..	...	W. O. Hunt.
Westmorland ... ..	...	John Bell.
Wilts ... ..	...	John Swayne.
Worcester ... ..	...	W. N. Marcy.
York (East Riding) ... ..	...	G. Leeman.
York (North Riding) ... ..	...	T. T. Trevor (deputy).
York (West Riding) ... ..	...	Benjamin Dixon (deputy).
Ripon ... ..	...	Samuel Wise.

### WALES.

Anglesey ... ..	...	O. Owen.
Brecon ... ..	...	Edward Williams.
Cardigan ... ..	...	Frederick Rowland Roberts.
Cardmarthen ... ..	...	Charles Bishop.
Carmarvon ... ..	...	Richard A. Poole.
Denbigh ... ..	...	Joseph Peers.
Flint ... ..	...	A. T. Roberts.
Glamorgan ... ..	...	Thomas Dalton.
Merioneth ... ..	...	David Williams.
Montgomery ... ..	...	J. P. Harrison.
Pembroke ... ..	...	Robert Lanning (deputy).
Radnor ... ..	...	Richard Banks.

## SELECTIONS FROM CORRESPONDENCE.

### POWERS OF MORTGAGEES.

A. ADVANCES TO B. £5,000 on equitable security, and takes a deposit of title deeds, relating to valuable estates in Lancashire, with the usual memorandum and undertakings. Shortly afterwards A., being in want of money, borrows £2,000 from C., and without

the knowledge or consent of B. pledges the aforementioned maniments as security for the last-named advance.

Is such a procedure consistent with the relative positions of A. and B., or one which a court of equity would take cognizance of? and if not, to what extent is a mortgagee (legal or equitable) warranted in depositing his mortgagor's title deeds with a third party, to secure the repayment of borrowed money without the concurrence of the mortgagor, or a transfer of the mortgage to the lender.

LIS PENDENS.

#### NUISANCE FROM RAILWAY.

A railway has recently been laid, running close by an old-established boarding-school: much inconvenience is sustained from the noise of the trains constantly passing and repassing. Is the master of the school, who is also the owner of the freehold of the mansion, entitled to a compensation or not?

AMICUS.

#### SURRENDER OF LIFE POLICIES.

I rejoice to find from a recent number of the LEGAL OBSERVER that one office, the *Minerva*, has the good sense—I may say honesty—to guarantee a return of the premiums paid on the assured desiring to discontinue the assurance,—a fact which has hitherto been very little known.

I subjoin the particulars of two most important benefits afforded by that company, independent of its registering notices of assignments which other companies in general refused to do.

I trust the advantages are inserted in the policy and not in the prospectus merely.

CLIO.

1st.—A guaranteed return will be made at any time for the surrender of existing whole term policies, effected by even rates, of forty per cent. of the amount of ordinary premiums received. This is an advantage which it is believed has not hitherto been afforded by any other assurance company.

2nd.—A person desirous of surrendering his policy may receive, instead of a payment in cash, a new policy for an equivalent sum, not subject to further payment of premium.

#### LIST OF PUBLIC GENERAL ACTS.

19 & 20 Vict.

C.p

1. An Act to regulate certain Offices of the House of Commons.
2. An Act to amend the Acts relating to the Metropolitan Police.
3. An Act to extend the Period for which Her Majesty may grant Letters Patent of Incorporation to Joint Stock Banks in Scotland existing before the Act of One thousand eight hundred and forty-six.
4. An Act to apply the Sum of One million six hundred and thirty-one thousand and five Pounds One Shilling and Fivepence out of the Consolidated Fund to the Service of the Year ending the Thirty-first Day of March One thousand eight hundred and fifty-six.
5. An Act for funding Exchequer Bills and raising Money by way of Annuities.
6. An Act for raising Five Millions by way of Annuities.
7. An Act to apply the Sum of Twenty-six Millions out of the Consolidated Fund to the Service of

the Year One thousand eight hundred and fifty-six.

8. An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.
9. An Act to amend the Acts relating to the Advance of Public Money to promote the Improvement of Land.
10. An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.
11. An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales.
12. An Act to confirm certain Provisional Orders made under an Act of the Fifteenth Year of Her present Majesty, to facilitate Arrangements for the Relief of Turnpike Trusts.
13. An Act to make Provision for the Management of certain Lands belonging to Her Majesty within the former Limits of the late Forest of Delamere in the County of Chester.
14. An Act to abolish the Office of Secretary to the Poor Law Commissioners in Ireland.
15. An Act for further regulating the Payment of the Out-Pensioners of Greenwich and Chelsea Hospitals.
16. An Act to empower the Court of Queen's Bench to order certain Offenders to be tried at the Central Criminal Court.
17. An Act to authorise for a further Period the Advance of Money out of the Consolidated Fund for carrying on Public Works and Fisheries and for the Employment of the Poor.
18. An Act to authorise for a further Period the Application of Money for the Purposes of Loans for carrying on Public Works in Ireland.
19. An Act for raising the Sum of Twenty-one million one hundred and eighty-two thousand seven hundred Pounds by Exchequer Bills for the Service of the Year One thousand eight hundred and fifty-six.
20. An Act to continue certain Compositions payable to Bankers who have ceased to issue Bank Notes.
21. An Act for raising the further Sum of Five Millions by way of Annuities.
22. An Act to amend the Laws relating to the Duties on Fire Insurances.
23. An Act for granting certain additional Powers and Authorities to the Canada Company.
24. An Act for enabling the Commissioners of Public Works in Ireland to acquire certain Lands for the Site of a Prison for the Reception of Juvenile Convicts.
25. An Act to amend the Law relating to Drafts on Bankers.
26. An Act to confirm Provisional Orders of the General Board of Health applying the Public Health Act, 1848, to the Districts of Waterloo with Seaforth, West Ham, Sowerby Bridge, and Moss-side; for Alteration of the Boundaries of the Districts of Rusholme and Bishop Auckland; and for other Purposes.
27. An Act to amend the Acts relating to Pawn-brokers.
28. An Act to make further Provision for rendering Reformatory and Industrial Schools in Scotland more available for the Benefit of Vagrant Children.
29. An Act to extend the Powers of the Trustees and Director of the National Gallery, and to

- authorise the Sale of Works of Art belonging to the Public.
30. An Act to settle an Annuity on Sir Fenwick Williams, in consideration of his eminent Services.
  31. An Act to amend the Act of the Seventeenth and Eighteenth Years of Her Majesty, concerning the University of Oxford and the College of Saint Mary Winchester.
  32. An Act to amend the Whichwood Disafforesting Act, 1853.
  33. An Act to continue the Act for extending for a limited Time the Provision for Abatement of Income Tax in respect of Insurance on Lives.
  34. An Act to grant Allowances of Excise Duty on Malt in Stock; to alter and regulate certain Drawbacks and Allowances in respect of Malt Duty; to repeal and re-impose the Excise Duty on Sugar used in Brewing Beer; and to amend the Law relating to Malt Roasters.
  35. An Act to authorise the West India Relief Commissioners to grant further time for the Repayment of Monies advanced by them in certain Cases.
  36. An Act for the better Preservation of the Peace in Ireland.
  37. An Act to Amend the Act for transferring to Counties in Ireland certain Works constructed wholly or in part with the Public Money.
  38. An Act for the further Amendment of the Laws relating to Labour in Factories.
  39. An Act to carry into effect a Convention respecting a Loan by Her Majesty to the King of Sardinia.
  40. An Act to Amend an Act of the Seventeenth and Eighteenth Years of Her present Majesty relating to Industrial and Provident Societies.
  41. An Act to make further Provision for the Establishment of Savings Banks for Seamen.
  42. An Act to continue the Act for the Exemption of Stock in Trade from Rating.
  43. An Act to authorise Issues out of the Consolidated Fund for the Redemption of certain Annuities charged on Branches of the gross Revenue.
  44. An Act for raising the Sum of Four Millions by Exchequer Bills and Exchequer Bonds, for the Service of the Year One thousand eight hundred and fifty-six.
  45. An Act for confirming a Scheme of the Charity Commissioners for Saint Mary Magdalen Hospital, near Bath.
  46. An Act to exempt Imprisonments under the Act 5 Geo. 4, c. 96, from the Operation of the Act abolishing in Scotland Imprisonment for Civil Debts of small Amount.
  47. An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
  48. An Act for Amending the Procedure before Magistrates and Justices of Peace in Scotland.
  49. An Act to continue certain Turnpike Acts in Great Britain.
  50. An Act to enable Pariahioners and others, forming a numerous Class, to sell Advowsons held by or in trust for them, and to apply the Proceeds in providing Parsonage Houses, augmenting small Livings, and to other beneficial Purposes; and for giving other Powers to such Persons.
  51. An Act to permit the Use of Rice in the Distillation of Spirits
  52. An Act to suspend the making of Lists and the Ballots for the Militia of the United Kingdom.
  53. An Act for confirming a Scheme of the Charity Commissioners for the Endowed School at Moulton in the County of Lincoln.
  54. An Act to facilitate the Despatch of Business before Grand Juries in England and Wales.
  55. An Act for transferring the Powers of the Church Building Commissioners to the Ecclesiastical Commissioners for England.
  56. An Act to constitute the Court of Session the Court of Exchequer in Scotland, and to regulate Procedure in Matters connected with the Exchequer.
  57. An Act to abolish the Jurisdiction of the Court of the Liberties and Manor of Saint Sepulchre in and near Dublin, and for the future Regulation of certain Markets of the said Manor.
  58. An Act to amend the Law for the Registration of Persons entitled to vote in the Election of Members to serve in Parliament for Burghs in Scotland.
  59. An Act to alter the Mode of providing for certain Expenses now charged upon certain Parts of the Public Revenue.
  60. An Act to amend the Laws of Scotland affecting Trade and Commerce.
  61. An Act to continue an Act for the Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man.
  62. An Act to provide for the Maintenance of Navigation made in connexion with Drainage, and to make further Provision in relation to Works of Drainage in Ireland.
  63. An Act to amend the Acts relating to Grand Juries in Ireland.
  64. An Act to repeal certain Statutes which are not in use.
  65. An Act to encourage the providing of improved Dwellings for the labouring classes in Ireland.
  66. An Act to extinguish certain Rights of Way and to stop up certain Roads and Paths near the Camp at Aldershot.
  67. An Act to extend the Period for applying for a Sale under the Acts for facilitating the Sale and Transfer of Incumbered Estates in Ireland, and to amend the said Acts.
  68. An Act to further amend the Laws relating to Prisons in Ireland.
  69. An Act to render more effectual the Police in Counties and Boroughs in England and Wales.
  70. An Act to render valid certain Marriages in the Church at Coatham in the Parish of Kirk Leatham in the County of York.
  71. An Act to continue certain Acts for regulating Turnpike Roads in Ireland.
  72. An Act to continue "The Railways Act (Ireland), 1851."
  73. An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those Purposes respectively.
  74. An Act to continue the Act to facilitate the Management and Improvement of Episcopal and Capitular Estates in England.
  75. An Act for the further Alteration and Amendment of the Laws and Duties of Customs.
  76. An Act to continue for a limited time the exemption of certain Charities from the Operation of the Charitable Trusts Acts.
  77. An Act to amend the Law and Practice of the Court of Chancery in Ireland in relation to the

- Appointment of Receivers over Real Estate, and to expedite the Sale of Estates in the said Court.
78. An Act to continue the Act of the Second and Third Years of Her Majesty, Chapter Seventy-four, for preventing the administering and taking of unlawful Oaths in Ireland, as amended by an Act of the Eleventh and Twelfth Years of Her Majesty's Reign.
  79. An Act to consolidate and amend the Laws relating to Bankruptcy in Scotland.
  80. An Act to grant Relief in assessing the Income Tax on Lands in Scotland in respect of certain Public Burdens charged thereon; to alter and regulate the Allowances to Clerks to the Commissioners of Income Tax; and to amend the Laws relating to the Land, Assessed, and Income Taxes, and the Redemption and Purchase of the Land Tax.
  81. An Act to reduce the Stamp Duties on certain Instruments of Proxy, to amend the Laws relating to the stamping of Articles of Clerkship to Attorneys and others; and to exempt from Stamp Duty Admissions to the freedom of the City of London by Redemption.
  82. An Act to repeal and reimpose under new Regulations the Duty on Race-horses.
  83. An Act to provide for the better Defence of the Coasts of the Realm, and the more ready Manning of the Navy, and to transfer to the Admiralty the Government of the Coast Guard.
  84. An Act to continue the Corrupt Practices Prevention Act, 1854.
  85. An Act to continue the General Board of Health.
  86. An Act to abolish the Office of Cursitor Baron of the Exchequer.
  87. An Act to amend the Lunatic Asylums Act, 1853.
  88. An Act to make further Provision for the good Government and Extension of the University of Cambridge, of the Colleges therein, and of the College of King Henry the Sixth at Eton.
  89. An Act to abolish certain unnecessary Forms in the framing of Deeds in Scotland.
  90. An Act to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, and Surgeons Mates of the Militia; and to authorise the Employment of the Non-commissioned Officers.
  91. An Act to amend and re-enact certain Provisions of an Act of the Fifty-fourth Year of King George the Third, relating to Judicial Procedure and Securities for Debts in Scotland.
  92. An Act to constitute a Court of Appeal in Chancery, and to amend the Law relating to Appeals from the Incumbered Estates Court in Ireland.
  93. An Act to constitute all legally-qualified Persons in Scotland Commissioners of Supply without being named in an Act of Supply.
  94. An Act for the uniform Administration of Intestates' Estates.
  95. An Act to give to the University of Oxford and to Colleges in the said University, and to the College of Saint Mary of Winchester near Winchester, Power to sell and exchange Lands, under certain Conditions.
  96. An Act for amending the Law of Marriage in Scotland.
  97. An Act to amend the Laws of England and Ireland affecting Trade and Commerce.
  98. An Act to amend the Laws relating to the Burial of the Dead in Ireland.
  99. An Act to amend the Acts relating to Lunatic Asylums in Ireland, so far as relates to Superannuations.
  100. An Act to amend the Law with respect to the Election of Directors of Joint Stock Banks in England.
  101. An Act to continue certain Acts to prevent the spreading of contagious or infectious Disorders among Sheep, Cattle, and other Animals.
  102. An Act to further amend the Procedure in and to enlarge the Jurisdiction of the Superior Courts of Common Law in Ireland.
  103. An Act to make better Provision for the Removal of Nuisances, Regulation of Lodging Houses, and the Health of Towns in Scotland.
  104. An Act to extend the Provisions of an Act of the Sixth and Seventh Years of Her Majesty, for making better Provision for the Spiritual Care of populous Parishes, and further to provide for the Formation and Endowment of separate and distinct Parishes.
  105. An Act to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year One thousand eight hundred and fifty-six, and to appropriate the Supplies granted in this Session of Parliament.
  106. An Act to authorise the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.
  107. An Act to amend the Smoke Nuisance Abatement (Metropolis) Act, 1853.
  108. An Act to amend the Acts relating to the County Courts.
  109. An Act to amend the Mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools.
  110. An Act for the better Regulation of the House of Industry Hospitals and other Hospitals in Dublin supported wholly or in part by Parliamentary Grants.
  111. An Act for confirming a Scheme of the Charity Commissioners for Stoke Poges Hospital in the County of Bucks, with certain Alterations.
  112. An Act to amend the Act of the last Session of Parliament, Chapter One hundred and twenty, for the better Local Management of the Metropolis.
  113. An Act to provide for taking Evidence in Her Majesty's Dominions in relation to Civil and Commercial Matters pending before Foreign Tribunals.
  114. An Act to prevent false Packing and other Frauds in the Hay and Straw Trade.
  115. An Act to provide for the Retirement of the present Bishops of London and Durham.
  116. An Act for the Appointment of a Vice-President of the Committee of Council on Education.
  117. An Act to amend the Law relating to the Relief of the Poor in Scotland.
  118. An Act to amend the Act of the last Session of Parliament for diminishing Expense and Delay in the Administration of Criminal Justice in certain Cases.
  119. An Act to amend the Provisions of the Marriage and Registration Acts.
  120. An Act to facilitate Leases and Sales of Settled Estates.

## NOTES OF THE WEEK.

## CRIMINAL LAW BILLS.

The eight bills presented to the House of Lords by the Lord Chancellor, and recently printed, for consolidating the statute law of England, are as follow:—

1. Relating to criminal procedure by indictment.
2. Relating to accessories to and abettors of indictable offences.
3. Relating to indictable offences of a public nature.
4. Relating to indictable offences against her Majesty the Queen and her Government.
5. Relating to indictable offences by perjury.
6. Relating to indictable offences against property by malicious injuries.
7. Relating to indictable offences against property by larceny and other offences connected therewith.
8. Relating to indictable offences against the person.

## ECCLESIASTICAL COURTS.

We observe that there has just been issued a reprint of the Special and General Reports, dated Jan. 25, 1831, and Feb. 15, 1832, made to his Majesty William the Fourth, by the commissioners appointed to inquire into the practice and jurisdiction of the ecclesiastical courts in England and Wales. The voluminous evidence, documentary and other, taken before the commissioners, is also re-printed. We presume that this re-print indicates an intention on the part of Government again to bring before Parliament the reform of the ecclesiastical courts.

## NEW POLICE MAGISTRATE.

*Thomas Borrow Burcham, Esq.*, has been appointed a police magistrate, in the room of Gilbert Abbott A'Beckett, Esq., deceased. Mr. Burcham was called to the bar by the Hon. Society of the Inner Temple Jan. 27, 1843, and went the Norfolk Circuit. He was educated at Trinity College, Cambridge, was afterwards a Fellow of that College and a very successful private tutor. He graduated in 1836, when he was third in the first class in classics. The Rev. Dr. Wordsworth, Canon of Westminster, was the first, and the Rev. T. H. Steel, M. A., one of the Masters of Harrow School, was second. Mr. Burcham is Recorder of Bedford.

## LAW APPOINTMENTS.

*Thomas Howard Fellows, Esq.*, has been appointed Solicitor General of Victoria, Australia. Mr. Fellows was called to the bar by the Hon. Society of the Inner Temple, Nov. 17, 1852. He is the son of a highly respectable solicitor.

*Mr. Anthony Berwick Were*, Solicitor, has been appointed registrar of the County Court of Wig.

*Geo. Edwards, Esq.*, Solicitor, has been appointed to the Commission of the Peace for Gloucestershire.

*Mr. Charles Francis Gale*, Solicitor, has been appointed Registrar of the Cheltenham County Court.

*Mr. John Benjamin Lee*, solicitor, has been appointed Secretary to the Bishop of London in the room of Mr. Christopher Hodgson, resigned, after a service of forty-three years.

## ANALYTICAL DIGEST OF CASES.

## SELECTED AND CLASSIFIED.

*Appeals under the Winding-up Acts.*

## CREDITORS.

2. *Right of, to have Master's judgment on his claim.*—Where a person claimed to be a creditor of a provisionally-registered railway company, ordered to be wound-up under the winding-up acts:—*Held*, on appeal from V. C. Stuart, that he was entitled to adduce before the master such proofs as he had in support of his demand, and to have the master's judgment whether upon such proofs it ought to be admitted as a claim only, or as a proof, although no list of contributories had been settled. *In re Warwick and Worcester Railway Company, ex parte Prichard*, 5 De G. M'N. and G. 495.

Case cited in the judgment:—*Re Norwich Yarn Company*, 31 Law J., N. S., Ch. 822.

2. *Rights of.—Admission of demand as claim.—Action-at-law.*—Where a claim was made to prove a demand as a debt under the winding-up acts against a company which was not authorised to be sued by any public officer, and the materials before the court were not such as to enable it to decide upon the demand: *Held*, confirming the decision of Lord Langdale, Master of the Rolls, reported 13 Beav. 426, that it was competent to the court under the winding-up acts to direct a claim merely to be admitted until the claimants established their demand

at law; but for that purpose the claimants ought to have liberty to take such proceeding at law as they might be advised, and ought not to be directed to bring an action against the official manager.—*In re Norwich Yarn Company, ex parte East of England Banking Company*, 5 De G. M'N. and G. 505.

## DIRECTORS.

*Exceeding power.—Repudiation of purchase after enjoyment.—Proof.—Assurance company.*—A registered insurance company agreed to sell its business to another insurance company, and a deed of assignment was accordingly executed, whereby the latter company covenanted to indemnify the former against all claims. After the business had been carried on for some time by the purchasing company that company failed, and both companies were wound-up under the winding-up acts. On the official manager of the selling company tendering a proof against the purchasing company in respect of claims satisfied by the selling company, one part of the deed of assignment was produced having affixed to it the seal of the purchasing company, but another part alleged to have been executed by the selling company was not forthcoming: *Held*, reversing the decision of Vice-Chancellor Stuart.

1. That after what had taken place, it was unnecessary to determine whether the selling company had

executed the purchase-deed, or whether its directors had exceeded their powers in making the sale.

2. That, where a purchaser had enjoyed the subject-matter of a contract, every presumption must be made in favour of its validity.

3. That, if all the proceedings on the part of the directors of the purchasing company, with reference to the purchase, had not been in strict accordance with their own deed, still if the contract with the other company was the means of the purchasing company coming into existence, they could not act in contravention of that contract. *In re Sea, Fire and Life Assurance Company, exports official manager of Port of London Ship Owners' Loom and Assurance Company, 5 De G. M'N. and G. 465.*

And see *Contributories*.

#### ENGINEER.

See *Creditors*, 1.

#### MANAGING COMMITTEE.

See *Call*.

#### OFFICIAL MANAGER.

See *Call*, p. 408 *ante*.

#### PARTIES.

See *Call*.

#### PROOF.

See *Directors*.

#### REPUDIATION OF PURCHASE.

See *Directors*.

#### RIGHTS OF CREDITORS.

See *Creditors*.

#### TRANSFER.

See *Contributories*, p. 408 *ante*.

### Common Law Appeals.

#### ACCEPTANCE OF SHARES.

See *Bankrupt*.

#### ADMINISTRATOR.

See *Set-off*.

#### ASSIGNEE.

See *Bankrupt*; *Charterparty*, 1.

#### BANKRUPT.

*Shares in incorporated company—Payment of call by assignee—Forfeiture—Acceptance of shares—Reasonable time.*—In November, 1847, R., being owner of 157 shares of £100 each in an incorporated company became bankrupt. Only £25 per share had been paid. At the time of the bankruptcy the bankrupt delivered the certificates of the shares to the official assignee, but the shares were then of no value. In June, 1849, notice was given to the official assignee of a call of £1 per share, which he was requested to pay. Nothing further was done by the company or the assignees until February, 1858, when the shares having become valuable, the assignees claimed to be registered in the company's books as the owners of them, and offered to pay whatever was due for calls. In answer to their application they received a letter from the secretary of the company stating that there were no shares standing in the registry book in the name of the bankrupt: *Held*, that assuming it was necessary

that the assignees should within a reasonable time do some act to signify their acceptance of the shares, the question of reasonable time was one for the jury; but that a reasonable time would not begin to run until some one interested in the matter took some step in respect of it. *Graham v. Van Dieman's Land Company*, 11 Exch. 101.

#### BILL OF LADING.

See *Consignee*.

#### CALL.

See *Bankrupt*.

#### CARGO.

See *Charterparty*.

#### COVENANT.

See *Ejectment*; *Lessee*, 2.

#### CHARTERPARTY.

1. *Delivery of cargo at port of discharge on payment of freight.—Demurrage.—Refusal to deliver—Assignee.*—Declaration that, in consideration that plaintiff, at defendant's request, would deliver wheat then on board plaintiff's ship (having been conveyed therein for freight to be paid by the person who should receive it) to defendant with lighters provided by defendant, defendant promised to receive it in a reasonable time: breach, that defendant made default in receiving in a reasonable time, whereby plaintiff was detained an unreasonable time in discharging. Defendant traversed the promise and the default and pleaded that plaintiff was not ready to deliver.

It was proved by charterparty the plaintiff, owner of a ship, agreed with the freighter to deliver a cargo at the port of discharge on payment of freight, conformably to the bills of lading, and a certain number of lay days were allowed, after which demurrage was to be charged at a given rate per day. The bills of lading stipulated for delivery to the freighter or his assigns on paying freight as per charterparty.

Defendant became assignee of the bill of lading, gave notice thereof to plaintiff, and demanded the goods, sending his lighters to receive them. Plaintiff delivered a portion, and demanded payment for freight on so much. Defendant refusing to pay plaintiff refused to deliver the residue, and the running days expired. Some time after plaintiff delivered the residue, and was paid the remaining freight. On a case authorising the court to draw inferences of fact:

*Held*, that neither the contract nor the breach was proved by the Court of Exchequer Chamber, reversing the decision of the Court of Queen's Bench. —*Young v. Meller*, 5 Ellis and B. 755.

2. *"Full and complete cargo".—Evidence as to usage at port of lading—Admissibility to explain.*—By charterparty the defendant agreed to load on board a vessel at Trinidad "a full and complete cargo of sugar, molasses <sup>and</sup> other produce." It appeared that it was the custom at Trinidad to load sugar in hogsheads, and molasses in puncheons in which mode they were carried more conveniently and with less loss to the merchant and that a full and complete cargo of sugar and molasses meant a cargo packed. *Held*, on appeal in the Exchequer Chamber (affirming the judgment of the court below) that the custom was admissible in evidence; for it was applicable to such a charterparty and did not control, but only explained the contract, which

ought to be construed with reference to the usage at the port of lading; also that the custom was reasonable and good in law.—*Cuthbert v. Cumming*, 11 Exch. 405.

## CHEMISTS AND DRUGGISTS.

See *Pharmaceutical Society Act*.

## COMPROMISE.

See *Conviction*.

## CONSIGNEE.

*Of bill of lading—Liability to demurrage—Lien on goods.*—The consignee of a bill of lading, which makes the goods deliverable to him or assigns "paying for the said goods as per charterparty," does not, by taking the goods at the destination, make himself liable to pay for demurrage in the port of loading, according to the rate stipulated in the charterparty; though there be an express stipulation for a lien on the goods for such demurrage.

So held in the Exchequer Chamber on appeal, affirming the judgment of the Queen's Bench. *Smith v. Sieveking*, 5 Ellis and B. 589.

## CONVICTION.

*Judgment of reversal—Setting aside writ of error—Compromise.*—A writ of error was sued out by a person convicted of a misdemeanor in the Queen's Bench; and judgment of reversal for non-joinder in error was entered up in the Exchequer Chamber. Subsequently the Queen's Bench, by rule, quashed the writ of error as having been improperly issued for the purpose of effecting a compromise. The writ of error, assignment of errors and judgment of reversal remained upon the judgment roll and transcript, and below them an entry was made of the rule of Queen's Bench quashing the writ of error. The prisoner sued out a fresh writ of error, and assigned errors both in the indictment and in the rule of the Queen's Bench. The prosecutor obtained a rule nisi in the Exchequer Chamber to expunge the entry of the judgment.

*Held*, that the Court of Queen's Bench, having in the exercise of its equitable jurisdiction quashed the first writ of error for matter *dehors* the record, that writ and the judgment under it were both void and gone, and ought not to appear on the record, and that the rule to expunge the judgment might be made absolute in its terms, as the writ of error on which it was founded, was absolutely avoided. *Aliter*, if the writ of error had been merely voidable; in which case the rule would have been misconceived as not embracing it. *Alleyne and others v. Reginam*, 5 Ellis and B. 399.

## DEFENCE OF SET OFF.

See *Set off*.

## DEMURRAGE.

See *Charterparty*, 1; *Consignee*.

## EJECTMENT.

*Lease—Forfeiture for breach of covenant—Covenants against letting beyond limited period, and not to mortgage or incumber—Waiver by receipt of rent.*—Ejectment for the Opera House on the ground that the lease was forfeited.

On a case stated, empowering the court to draw inferences of fact, it appeared that in the lease was a condition for re-entry on default of performance of the covenants in the lease.

One was a covenant not to use the property for any but theatrical purposes, and to use the lessee's best endeavours to improve it. The theatre was in

fact closed for two years, which was injurious to it as a theatrical property; but it did not appear that the lessee was able to keep it open.

*Held*, no breach of the covenant, by the Courts of Queen's Bench and Exchequer Chamber.

Another covenant was not to let any of the boxes or stalls for a longer period than one year or season. The lessee, twelve days before the end of one season, let boxes for the next season, the term to commence at a day earlier than the expiration of a lease of the same boxes to another party for the preceding season.

*Held*, that a covenant restricting the common law authority of a lessee to let was not to be construed in the same way as an enlarging power to let; and that construing the covenant in the same way as an enlarging power to let; and that, construing the covenant in this case with reference to the nature of the property the lease of boxes was in substance for not more than one season, and was no breach. By the Courts of Queen's Bench and Exchequer Chamber.

Another covenant was against mortgaging or incumbering the property. Numerous judgments were signed against the lessee, some in actions by judges' orders, some on cognovits, and some on warrants of attorney.

*Held*, that registered judgments are charges on property; but that contracting debts and not paying them, though followed by judgments, was no breach of the covenant, even though the judgments were facilitated by a cognovit or warrant of attorney.

But it appearing, on the defeazances, that some of the warrants of attorney were given expressly as collateral securities for mortgage money, and that it was intended that the judgments should, for that purpose, be signed and registered.

*Held*, by the Court of Queen's Bench, that the giving such warrants under which the judgments were so signed and registered constituted breaches of the covenant, and grounds of forfeiture.

*Held*, by the Court of Exchequer Chamber, on error, that this did not constitute breaches of the covenant or grounds of forfeiture.

After all the forfeitures had been incurred, the time having come when rent would become due, the lessee tendered the rent to the lessor. He refused to take it, except on the terms that it should be taken not as rent, but as compensation for use and occupation subsequent to the forfeiture. The lessee refused to agree to any such condition; the lessor then took the money, declaring he would not take it as rent, or as waiving the forfeitures.

*Held*, by the Court of Queen's Bench, that in legal effect money must be taken according to the intent of the party paying it; in this case as rent; and that the receipt of rent, as a matter of law, operated to waive all forfeitures then known to the lessor, and that no protest on his part could prevent this legal effect. [At the time of the receipt the lessor knew of most of the judgments, but did not know of every instance.]

*Held*, by the Court of Queen's Bench, that he must be taken to waive all forfeitures by that breach of which he had notice, though it was more extensive than he was aware of.

The defendant had judgment in the Court of Queen's Bench, which was affirmed on error in the Court of Exchequer Chamber, on the ground that no forfeiture had occurred; the latter court pronouncing no opinion of waiver. *Croft v. Lumley*, 5 Ellis and B. 648, 682.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, OCTOBER 25, 1856.

### METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

We are glad to submit to our readers a report of the proceedings at a numerous and influential meeting of the members of the Metropolitan and Provincial Law Association, held on Tuesday, the 16th instant, in the library of St. George's Hall, Liverpool.\* We propose, however, in the first place to notice some of the principal topics which engaged the attention of the meeting, namely, the progress and present state of the association;—the defective nature of legislative measures for altering the law;—the improvements in legal and general education;—the exclusion of attorneys from the inns of court; and other subjects. The resolutions that were passed on several of these matters will be found in the subjoined report; and several of the papers or dissertations we hope hereafter to submit to our readers.

1. After some preliminary observations, the Chairman, Mr. W. Strickland Cookson, of Lincoln's Inn, adverted to the origin of the association, which was established for the purpose of "promoting the interests of the suitors and the better and more economical administration of the law; of obtaining the removal of the many and serious grievances affecting solicitors, and through them the suitors; and of maintaining the rights and increasing the usefulness of the profession." He described the progress of the association in its endeavour to obtain the united action of every solicitor in the kingdom, and noticed the continued circulation, amongst the general body, of information on the state and prospects of the profession, and the manner in which the public interests were thereby affected. It was then remarked that the support received was much less extensive than had been anticipated. Hence, with a view to make the objects and nature of the association better known, these meetings in the provinces were suggested, and they had been found very beneficial. Such meetings, the Chairman justly observed, were of immense value in making the members of the profession throughout the country acquainted with each other.

We have often had occasion to observe that one of the prominent advantages of the associations consisted in removing an impression that the attention of the London solicitors was principally directed to metropolitan and not to provincial interests. The error of this view might have been corrected by recollecting that the country solicitors are well represented by several hundred London agents, a great proportion of whom are not only members of the Incorporated Law Society, but form a large part of the council itself. The establishment of the association appears to have convinced its members that the interests of the entire profession, whether in town or country, are equally cared for. These meetings also may, in some degree, further promote a union of feeling amongst attorneys and solicitors, like that which prevails in the other branch of the profession, through the custom of "coming into Commons" at their inns of court in term time, and of the "bar mess" on the several circuits.

2. The next topic of observation was the defective state of legislation, and the urgency of a reform in the framing of acts of Parliament for the alteration of the law, in order to avert the evils which now prevailed, without impairing the constitutional privileges of the two Houses of Parliament. The establishment of a Government Board to consider and revise the bills in Parliament was recommended. And it was suggested that the several law societies should watch the progress of measures affecting the administration of justice, and communicate to the central committee the result of their deliberations.

It may be added that any erroneous impression that the older institution, "The Incorporated Law Society," and the Metropolitan and Provincial Law Association were in any respect antagonistic to each other, was effectually removed by the explanation of the Chairman, who, amongst other points of union, noticed that no less than seven members of the council of the Incorporated Society were members of the managing committee of the new association.

3. The subject of legal education was then mooted, and underwent considerable discussion. Mr. Edwin Field, who brought forward the subject, contended for several different examinations during the term of five years' clerk-

\* This report has been compiled from the *Liverpool Weekly Mercury* and the *Liverpool Mail*.



ship. He proposed that instead of requiring the candidate to come up for examination in various subjects at the end of his clerkship, he should go up when he pleased, say after a year or two, and get his certificate on a particular subject, and so on till he had a sufficient number of certificates. Thus, it was urged, that in lieu of being "crammed" he would be compelled to go through a course of two or three years' reading.

How far this suggestion may be convenient for three-fifths of the articulated clerks who come from the country we are not aware; but from all we can learn the proposed alteration is not generally approved, although it cannot be denied that it would be attended with considerable advantage. The plan is not adopted in the medical profession; and, after all, the question is whether the candidate is fit and capable to act as an attorney at the time he is admitted, not whether several years ago he answered some conveyancing or other questions, and subsequently passed in other departments.\* However, the suggestion is well entitled to full consideration; but we are not aware that the provincial law societies generally recommend this mode of proceeding.

After much discussion a resolution was passed, referring to a communication to the Incorporated Law Society in 1853, and expressing a hope that the society would shortly feel able to deal with the subject. We believe that since that communication the examiners have not been inattentive to the suggestions made to them.† Two or three years ago the examination was extended to the principles and practice of conveyancing, and latterly it has been determined, in order to promote the study of the law, to give prizes each term to three of the candidates who pass a superior examination. Mr. Field appears to approve of the subjects of the examination, but proposes an alteration in the mode of conducting it. No doubt the examiners will take the suggestion into consideration. Prizes, however, we presume, could not be given on each of these separate examinations.

4. It appears from the discussion which took place that Mr. Hope Shaw and other members are content with the present legal examination, but desire that a preliminary examination should take place for the purpose of ascertaining that the clerk, before entering into articles on the threshold of the profession, has received a classical, or, at all events, a liberal education. The conclusion come to appears to be that there should be evidence of a liberal education,

but some dissent was expressed as to extending it to the dead languages. On this subject we would call attention to the statement made by the Chairman of the view taken by Mr. Gladstone, when Chancellor of the Exchequer, in favour of a better education of young men who were to be articulated.

Mr. Anderton and Mr. Lace strongly objected to the proposed classical examination as likely to exclude deserving men of ability; but Mr. Field said that the advocates of a preliminary examination proposed to confine such examination to young men articulated before twenty or twenty-one, and not to use it as a bar to the admission of deserving clerks who might be able, as many highly honourable members had done, to raise themselves by their own perseverance and merit.\*

In order, however, to carry into effect the proposition that no one shall be allowed to enter into a contract to serve a clerkship without the preliminary examination to the extent suggested, we presume the sanction of the legislature must be obtained, unless the judges should deem themselves authorised under the general power of examining, by "such ways and means as they think proper," to order an examination other than on legal subjects. We suggest this point for consideration, not in opposition to the proposed improvement, but in order that, as Mr. Hope Shaw observed, the difficulties in carrying the suggestions as to a preliminary examination may be considered; and certainly the projected change is sufficiently important to account for some delay in its adoption.

5. The exclusion of attorneys from the inns of court, which was the next important subject of consideration, has been again and again adverted to in these pages; and we rather marvel that (according to the reports of the meeting which we have received) nothing was said in reference to the recent Report of the Commissioners on the Inns of Court and Chancery, whereby it is proposed to establish "a law university," for members of the bar only, to the exclusion of the attorneys and solicitors and their articulated clerks from the libraries and lectures of the inns of court.

The report and all the material parts of the evidence taken before the commissioners have been laid before our readers, and we would also refer to the notice taken of this grievance in the last report of the council of the Incorporated Law Society.‡

Referring to the subjoined report of the speeches on this particular subject, and other topics in relation to the bar, we may close these remarks by enumerating the other papers and resolutions submitted to the meeting, namely,—

\* The expense of several journeys to London, and of several examinations, would, we apprehend, constitute a serious objection. The Attorneys and Solicitors Act, 6 & 7 Vict. c. 73, s. 3, requires that the examination should take place "after the expiration of the articles."

† It should be recollected that the council are associated with the masters of the superior courts in conducting the examination under the direction of the judges.

\* The distinction between clerks who are articulated before and after the age of twenty-one—the one undergoing a classical or liberal examination and the other exempted—will be attended with considerable difficulty.

‡ See p. 320, ante.

6. The objectionable fixed scale of costs or tariff of legal charges, by Mr. Field.

7. The suggested registration of the names of private partners, by Mr. Ryland.

8. The "Citing and Pleading of Statutes," in which it was suggested by Mr. Devey that in order to avoid the anomaly of describing a statute as of two years of the reign, in which it was introduced and passed, it should be described as of the year in which it received the Royal Assent.

9. The subject of reformatory schools was introduced in an able paper by Mr. Morgan, of Birmingham, and Mr. Anderton made an able statement of the good effect of such institutions in the City of London.

10. The system of procedure was the topic of another paper, but which was adjourned for amendment by the author.

11. Mr. T. B. Sharpe, of Norwich, suggested further improvements in the practice of the county courts, which seem destined to incessant controversy.

12. The last, "tho' not the least in our affections," was the proposition of Mr. Anderton to establish a Benevolent Fund for the relief of the attorneys and solicitors of England and Wales, their widows and families; and a resolution was passed appointing a special committee to draw up regulations and report to the next meeting. Our readers need not be reminded that the late Mr. Bryan Holme projected an institution for the aged and infirm attorneys of the metropolis, and that there is already an association in London for the relief of the widows and families of professional men. Mr. Anderton's proposal, however, comprehends the whole of England and Wales. The promoters and supporters of the other institutions, we believe, deemed it expedient to confine their exertions to the metropolis; but we have no doubt that the new committee just appointed will communicate with the several committees of the other benevolent societies, and arrange either a coalition of the whole, or such mutual co-operation as may be advisable in carrying both objects into effect.

At the dinner given by the Liverpool Law Society Mr. Lace presided, and Mr. Lowndes and Mr. Norris were vice-presidents—a sufficient proof, from the great respect in which these gentlemen are held, of the zealous support afforded to the important objects of these annual meetings of the profession. It is gratifying, also, to notice the esteem in which the solicitors of Liverpool are held by the chief corporate authorities of that great municipality. It was, of course, through their influence that the deputations from the several law societies were invited by the mayor and aldermen to partake of a splendid entertainment, at which they were heartily welcomed to Liverpool.

## REPORT OF THE ANNUAL MEETING OF THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

On Tuesday, the 14th inst., an aggregate meeting of the members of this society was held in the Library, St. George's Hall, Liverpool. Mr. W. S. Cookson, of Lincoln's-inn, the deputy chairman of the association, presided, owing to the absence of Mr. Sangster, of Leeds, the Chairman of the association. There were also present a large number of the leading members of the profession both from the metropolis and throughout the provinces.\*

The *Chairman*, in his opening address, said it was now several years since the Metropolitan and Provincial Law Association was established for the purpose of "promoting the interests of suitors, and the better and more economical administration of the law, of obtaining the removal of the many and serious grievances affecting solicitors, and, through them, the suitors; and of maintaining the rights and increasing the usefulness of the profession." In the first report of the committee of management, in April, 1848, the importance of united action was strongly urged, and the committee recommended that every solicitor in the kingdom should become a member of one of the local law societies, and that there should be a continued circulation amongst their own body of information on the state and prospects of the profession, and the manner in which the public interests are thereby affected. They added that between the metropolitan society and the various provincial law societies it was important that continued communication should be kept up. It could not, he thought, be doubted that the committee of management judged wisely in deeming it essential to the accomplishment of the ends aimed at that the association should not only fix its roots firmly in London, but that its branches should spread over the country—that the association should be, in essence as in name, metropolitan and provincial.

It was from the counties forming the northern circuit that the most numerous and most immediate responses were received, and it was there that the first sub-committee was formed. But the support received was much less extensive than had been anticipated, and with a view to make its objects and nature more extensively known it was suggested that meetings of the association should be held at intervals in the provinces, and the beneficial results

\* The following are some of the names:—London, Messrs. W. S. Cookson, E. W. Field, J. S. Torr, W. Shann (the secretary), J. Anderton, A. C. Hemeley, and C. J. Manning (assistant secretary); from Leeds, J. Hope Shaw, Eddison, Snowden, J. Bulmer; from Liverpool, Ambrose Lace, E. Banner, W. Radcliffe, Palgrave, Simpson, Henry Bell, George Webster, J. O. Watson, R. Williams, Duke, Stevenson, R. A. Payne, Thomas Arison, Russell, Statham, Falcon, Lloyd, Wareing, Norris, M. D. Lowndes, Jenkins, Martin, Dodge, Hall, Eden, Wright, Lawrence, Peel, Thornely, Shuttleworth, Carson, &c.; from Manchester, Heelis, Baker, Marriott, Street, Thorley, &c.; from Birmingham, W. Morgan, Allen, A. Ryland, &c.; W. Beaumont (Warrington), Thomas Hodgson (York), John Marsden (Wakefield), J. Lewis (Wrexham), Hayes (Wolverhampton), H. E. Sylvester (Beverley), John Case (Maldstone); from Hull, Jackson, Phillips, and Hill; Caparn (Holbeck); from Worcester, J. Piddock, Tree, and J. Stallard; from Lancaster, Sharp, Hall, Holden, Swainson, Moore, and Jackson; Parkinson, (Horncliffe); St. Helen's, Gaskell, Taylor, and Ansdell; Hunt (Nottingham); Hall (Clitheroe), E. Ward (Preston); Bristol, Cox and Wasbrough; Wakefield, Baydon, Horbury, and Riekslay; Flaher, Newport, Salop, &c. &c. Deputations attended from the following law societies:—Hull, Leeds, Manchester, Birmingham, Bristol, Lincolnshire, Yorkshire, Nottingham, Kent, Lancaster, Wakefield, and Worcester-shire.

of the meetings at Derby, in 1852, and at Leeds, in 1854, led to a resolution that in future the meetings should be annual, and that members should be invited at those meetings to read papers on subjects interesting to the profession, and that a discussion should follow upon each. Last year the meeting was held at Birmingham, when several papers were read and discussed. The attendance was numerous and influential, and the meeting was an agreeable and a useful one. Such meetings were of immense value in making the members of the profession throughout the country acquainted with each other.

A statement had been prepared giving a summary of the last session so far as it effected the practice of the law. In his opinion there was no subject more interesting to the profession, and more thoroughly demanding a thorough and systematic reformation, than the framing of acts of Parliament. After dwelling on the careless and hurried manner in which bills for the amendment of the law are generally carried through Parliament, and the expenditure consequently entailed upon the public in the vain endeavour to learn what the Legislature had intended, but had not properly expressed, the Chairman went on to say that it was not easy to point out in what manner the evils of crude and slovenly legislation might be corrected, and at the same time the constitutional privileges of the two Houses of Parliament be preserved unimpaired. Possibly the revision of bills after they had passed both Houses by a Government board might be the least objectionable mode; but care should be taken that the duties of the board were accurately defined, its powers being limited to the correction of the evils complained of, by suggestions only, for the consideration of the Houses of Parliament. As the duty of construing and enforcing the laws devolved upon the Crown, through its representatives, there did not appear to him to be any constitutional reason why, when a bill was presented for the royal assent, the Crown should not be permitted, before giving that assent, to offer suggestions on the points indicated.

But whatever remedy that was provided, one thing remained clear, and that was, that societies like that might afford valuable assistance in the amendment of the law. If the members of that association would but give attention to bills passing through Parliament, and individually, or through the local societies, give to the central committee of management the benefit of their deliberations, that body would be enabled to represent the opinions of the profession, and its statements would receive an attention and consideration which separate individuals could not expect to command.

Before concluding he desired to refer to that older institution of which he was glad to know that many of those present were members, the *Incorporated Law Society*, in order to remove any impression which might erroneously exist, that the two bodies were in any respect antagonistic to each other. The Incorporated Law Society and the Metropolitan and Provincial Law Association, through the council of the one and the managing committee of the other, continued, he was glad to say, to keep up a cordial and unreserved communication with each other, and he believed that at that moment no fewer than seven members of the council of the former were members of the managing committee of the latter. It gave him great pleasure to announce that the council had resolved to give prizes at the termal examinations of applicants for admission on the rolls to such gentlemen as should pre-eminently distinguish themselves,

and the first prizes would be given in Michaelmas term next. At the next anniversary of the association he trusted the committee might have to announce that progress had been made in arrangements for ascertaining that gentlemen intended for the profession had received a liberal education.

On the motion of Mr. *Beaumont*, of Warrington, the Chairman of the Manchester Law Association, seconded by Mr. *Baker*, the Chairman of the Committee, and Mr. *Anderton*, one of the undersheriffs of London, it was resolved that next year the association should assemble at Manchester.

Mr. *Ryland* briefly referred to the chairman's remarks respecting the importance of having a board for the revision of bills as they are passed through Parliament. The chairman had suggested that such a board or officer might be appointed by the crown; but it appeared to him (Mr. Ryland) it would cause a feeling of jealousy on the part of Parliament if an officer of the crown should be appointed. He rose for the purpose of following a suggestion then in the hands of the members of the association, from the commissioners of statute law. The commissioners had given a very considerable part of their report to this very subject, and in noticing the evils which the society itself had noticed they pointed out as the only remedy that an officer should be appointed at all times ready to give information, and prepared to do so; and then they go on to suggest that such officer of the board should be considered as the servant of the house, and should not have the power to report upon the policy or the expediency of any matter which might be referred to him.

The Chairman was very much obliged to Mr. Ryland for his suggestion, but the precise manner in which the board was to be appointed was but a matter of secondary consideration. He thought it was absolutely necessary that something of the sort should be done.

The following resolution was then moved by Mr. *Field*, and seconded by Mr. *Hope Shaw*:—"Considering that there have been before the Incorporated Law Society, since the year 1853, important suggestions on the subject of legal education, not only from this association, but also from most of the principal local societies of the kingdom, this meeting feels bound to express its hope that the authorities of that society will shortly feel able to deal with the subject."

Mr. *Field* thought the Incorporated Law Society had not been sufficiently active upon the subject of the education and examination of their clerks before they were admitted on the rolls, the present system being one of cramming. He did not think they would be doing their duty if after the lapse of two or three years they did not in some way let the Incorporated Law Society know that they were not satisfied—that they were dissatisfied with the length of time which they had taken in dealing with the matter. As far as he was aware they had done nothing actually towards the improvement of the system. The suggestion which he wished to make was a very simple one, and the plan was one which was being fully acted upon by the universities. It was, instead of requiring every young man who came up for examination to come on one day and pass his examination in all the various subjects which very properly they were required to be examined upon—instead of doing that, let the young man go when he pleased during his articles—say a period of a year or two before the termination—and get his certificate of examination on a particular

subject, and so on until he got a sufficient number of certificates. The effect of this would be that instead of having a young man crammed he would be compelled to go through a course of two or three years' reading, and it would affect very much his character and habits.

Mr. Hope Shaw was not quite prepared to agree in what had been said against the Incorporated Law Society, because he did not know what difficulties they might have had to contend with. He must express his entire concurrence not only in the importance but the absolute necessity for some very great improvement in the system being adopted for the purpose of securing a proper education to those who intended to enter their ranks. He did hope that what had been said—as he was quite sure it would be represented to the council of the Incorporated Law Society—would receive from them that attention which suggestions from a meeting like that upon a subject so vitally affecting their profession were pre-eminently entitled to. He wished only to add one observation to those which Mr. Field had made. It appeared to him (Mr. Shaw) that Mr. Field's remarks were confined entirely to what might be called strictly professional education—education in the law alone. Now, that by no means included the whole of what he thought necessary; and from what he had collected on former occasions, and from the way in which the hint was now received, it by no means included the whole of what was thought necessary by the profession generally. He thought their views should extend to all the ordinary branches of a liberal education, so that those who joined their ranks hereafter should have at least the security which a liberal education afforded—and it was no slight one—that they had those feelings of gentlemen which literary pursuits induced.

Mr. Anderton strongly opposed the resolution.

A somewhat long and animated discussion ensued, during which Mr. Shaw explained that he did not mean to say that a classical education was the one thing needful; a liberal education, properly understood, was all he wanted; and as Mr. Anderton said that he by no means objected to a liberal education being required, he (Mr. Shaw) was in great hopes that the meeting would be unanimous. He might perhaps include in his term of liberal education a somewhat wider range than that of Mr. Anderton, but that was a subject which might very properly and very fairly be left to the consideration of the committee.

Mr. Field observed that, as far as he understood the views of those who advocated a preliminary examination, their object was to confine it entirely to such young men as were articulated before they had reached twenty or twenty-one years of age, and not to use it as a bar to the admission of deserving clerks who might be able, as many highly honourable members of the profession had done, to raise themselves by their own perseverance and merit. One advantage of a preliminary examination would be, that, whereas it was very difficult indeed to induce examiners finally to reject a candidate who had paid, perhaps, a large premium—at all events had paid the stamp duty upon his articles, and had served through a five years' apprenticeship—whatever his stupidity or his shortcoming might be, there would be no such delicacy, in saying to a lad who had lost no time, and had incurred no expense, "Sir, you are not likely to succeed in the profession of the law, and you had better, at once, turn your attention to something else."

Mr. Lacey, of Liverpool, objected to a classical test, as likely to exclude many young men of ability from the profession.

Mr. Silvester, of Beverly, drew a distinction between a "classical" and a "liberal" education, and observed that, as he understood Mr. Hope Shaw, it was a "liberal" education only that he was desirous of insisting on.

Mr. Shaen, the secretary, read extracts from various reports upon this subject, and the opinions which had been elicited from several provincial law societies upon it. The communication from the Liverpool Society suggested a course of examination which included not only Latin but Greek. Whereupon Mr. Anderton, to the infinite amusement of the meeting, said he should like to see any gentleman present subjected to such an examination. He, however avowed himself the advocate of a "liberal" education, and

Mr. Hope Shaw, observed that as a "liberal" education was all that he himself required, he was in great hopes that the meeting would be unanimous. He might perhaps include in his term of liberal education a somewhat wider range than that of Mr. Anderton, but that was a subject which might very properly and very fairly be left to the consideration of the committee.

The Chairman reminded the meeting that the legislature had, in fact, recognised the value of an educational test, by shortening by two years the term of apprenticeship, in cases where the clerk, before being articulated, graduated at some university; and as he had generally found, in his experience, that the young men who had had this advantage were better informed, even upon professional subjects, at the end of three years, than others at the end of five, he had generally recommended any friends of his intending to bring up their sons to the profession to avail themselves of this option, and to allow them to graduate before they entered upon the study of the law. In an interview with Mr. Gladstone, when Chancellor of the Exchequer, upon the subject of the certificate duty, when a suggestion had been made that the profession might be relieved by reducing the duty upon articles of clerkship, a deputation, of which he had the honour to be a member, had represented that, although they by no means wished to retain the stamp duty at its present amount, they did hope that any arrangement for its reduction would be accompanied by provisions which would secure that the money thus saved should be spent upon better education of the young men who were to be articulated. Mr. Gladstone had been pleased to express his entire approbation of the object of the deputation—which was to keep the profession among educated men—and had told them that the government would be willing to aid in the endeavour to accomplish it. He could assure them that there was a great desire, on the part of the Incorporated Law Society, to meet the wishes of the profession in this matter; and he believed that there was also a very general desire that the education of young men entering the profession should be better than it now was. The resolution was then adopted.

Mr. Field then read a paper entitled "Should the bar be autocratic, and should there be an enforced tariff of prices for legal work?" The paper, which was a very able one, excited considerable discussion, in which it was unanimously agreed that attorneys were subjected to great injustice with regard to being admitted to the bar, and that attorneys of long practice were better qualified for offices which were now

only conferred upon barristers of seven years' standing.

On the motion of Mr. Lewis, of Wrexham, it was resolved "That without further discussing the question as to whether an arbitrary demarcation should be imposed upon the two branches of the profession, the meeting felt called upon to express an opinion that the rules which restrict attorneys from keeping terms and exclude them from the higher honours of the profession were unjust, and fraught with disadvantage to the public at large."

Mr. Banner moved a resolution—"That all scales of taxation, if any are to exist, ought to be directed to encourage the attorney to perform his duties efficiently, and that so far as any rules tend to the undue employment of the bar, or permit the neglect by the barrister of the duties which, by receipt of his brief, he has undertaken to perform, they are opposed to every object which can justify their existence."

Mr. Field seconded the motion.

The resolution was then put and carried unanimously.

Mr. Ryland, of Birmingham, then read a paper on "The expediency of a registration of the names of partners constituting trading partnerships." Mr. Ryland said every one present must have experienced and that not infrequently, much difficulty and inconvenience from these two conflicting facts, namely, that in suing private partnerships (and by that term he meant all trading partnerships not incorporated) in the superior courts it was necessary to state the name of every partner; and in the second place, that the great majority of private partnerships were carried on under firms which did not indicate the names of the persons constituting those firms.

Mr. W. Shaen, the secretary of the association, read a paper by Mr. C. A. Smith, of Greenwich, entitled "Public Prosecutors and a Minister of Justice."

The writer gave a very complete analysis of the recommendations of Mr. Phillimore's select committee of last session, and of the arguments *pro* and *con*. His own opinion appeared to be that no sufficient case for the appointment of a public prosecutor, at a salary of £700 a-year, in every county court district, and of an "advising council," at a salary of £500 a-year, on every circuit, had been made out.

Mr. Gaskill Taylor, of Warrington, was against any such appointments. He denounced the present tendency to centralisation, and the encroachments on trial by jury.

The discussion which followed turned principally upon the very inadequate allowances made under the present system for the conduct of prosecutions. This, it was contended, by deterring respectable attorneys, from having anything to do with them, was a principal cause of evils which the advocates of the system of public prosecutors professed to be anxious to remedy.

Eventually, the following resolution was passed, on the motion of Mr. Eddeson, of Leeds.—"That no system of public prosecution can work efficiently that does not throw upon the districts the responsibility of prosecuting, and which does not provide for the full indemnification of prosecutors for any reasonable expense they may incur."

It being now five o'clock, the meeting was adjourned until ten o'clock on Wednesday morning. About 120 members dined together in the evening at the Adelphi Hotel, the dinner being given by the Liverpool Law Society.

The members of the association re-assembled in the Library of St. George's Hall on Wednesday the 15th inst. Mr. W. S. Cookson, of Lincoln's-inn, the deputy-chairman of the association, again presided, and there was a numerous attendance.

The Chairman, in opening the proceedings, said the first business was the reading of a paper by Mr. F. N. Derey, of London, on "The Citing and Pleading of Statutes," which Mr. W. Shaen, the secretary, then read.

Mr. W. Morgan, of Birmingham, then read a paper, entitled "The Reformatory and Industrial Schools Act; and some remarks on the recent meeting of the National Reformatory Union at Bristol."

Mr. Anderton said if there was one question of greater importance than another, either to the clergy or the legislature, the magistrate or the philanthropist, it was, in his (Mr. Anderton's) opinion, the one then under notice. He had the honour to be one of the governors of two reformatory institutions in London. To one of them *the* Bridewell Hospital, they had attached a reformatory school, called the House of Occupation, where a great number of boys and girls were taken in every year, and of course, a similar number discharged. And he gave an interesting account of the operations of these excellent establishments.

The Secretary then read a short paper, entitled "A Few Thoughts on County Courts," by Mr. B. T. Sharpe, of Norwich. The writer suggested a number of alterations, with a view of raising the position of county courts; and concluded by recommending the appointment of a sub-committee to take the matter into consideration.

Mr. Anderton then asked the society to close in the most effective manner the proceedings for which they had met by agreeing to a resolution which he should have the honour of submitting to them. There were among the profession many who might leave widows unprovided for and children without any means of education, and it was for their aid that he wished all who were more fortunate in life to come forward. He moved a resolution to the effect that the meeting thought it desirable to form a benevolent society, having for its object the relief of distressed attorneys and solicitors practising in England and Wales, and in case of death, of their widows and orphans.

Mr. Banner, on behalf of the Liverpool society, felt much pleasure in seconding the motion. The subject was one which had more than once occupied his attention, and he had intended to bring it forward at some future period. As far as Liverpool was concerned he begged to tender his services in promoting the object to the fullest extent in his power, and he thought they would be met not only with liberality, as far as money was concerned, but with a desire to work out the scheme in its fullest integrity.

Mr. Hope Shaw and several other gentlemen expressed their concurrence in the object, and the motion was ultimately carried unanimously, Mr. Anderton, Mr. Banner, and Mr. Shaw being appointed a special committee, having power to add to their number, to draw up the rules and report.

Thanks were then unanimously voted to the Mayor and Corporation of Liverpool; the Liverpool Law Society; the Chairman, the Secretary, and Assistant Secretary.

The members of the association were most hospitably entertained by the Liverpool Law Society, and by the Mayor of Liverpool. They were also

gratified by the inspection of the various public buildings and institutions of that great mart of commerce and shipping.

## NEW SCALE OF COUNTY COURT COSTS.

A SCALE of costs and charges to be paid to counsel and attorneys in the county courts, as well between party and party as between attorney and client.

Under the provisions of the statute 19 & 20 Vict. c. 108.

	£	s.	d.
Letter before suit ... ..	0	3	0
Instructions to sue or defend ... ..	0	5	0
Attendances and entering plaint, including particulars of demand and copies, such particulars and copies being signed by the attorney ... ..	0	10	0

N. B.—The total amount of these items to be entered on the summons.

Examining and taking minutes of the evidence of each witness afterwards allowed by the judge ... ..	0	3	0
Attending court and conducting cause, where no counsel employed ... ..	1	10	0

*Witnesses' expenses, in conformity with rule.*

Attending taxing costs ... ..	0	3	0
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*Occasional costs:*

Attending to apply for summons out of the district ... ..	0	4	0
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N. B.—The amount of this item to be entered on the summons.

If plaintiff abandon action, and give notice thereof, attending settling ... ..	0	3	0
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Notice to produce, notice to admit, notice of application for a new trial or to set aside proceedings, including copies or duplicate originals and service, and notice of special defence and copies, including particulars, and copies in cases of set-off, and attending registrar of the court therewith, such notices, particulars, and copies being signed by the attorney ... ..	0	5	0
Attending inspecting documents ... ..	0	5	0

Mileage one way, from the attorney's place of business to place of inspection of documents, for each mile, not exceeding in the whole twenty miles ... ..	0	0	6
Preparing confession or statement of agreement under sec. 8 or sec 9 of 13 & 14 Vict. c. 61, where prepared by plaintiff's attorney, including all incidental attendances ... ..	0	7	0

All necessary affidavits, including filing, each ... ..	0	5	0
Oath, sum paid.			
Attending to enter up judgment by default ... ..	0	3	0

Attending court for an order to bring up a prisoner to give evidence ... ..	0	4	0
Instructions for, and drawing and copy brief, in cases in which counsel employed, including attendance on counsel therewith ... ..	2	0	0

Fee to counsel and clerk, sum paid not exceeding ... ..	8	5	6
Attending court on trial, with counsel ... ..	0	10	0
Attending court to support or oppose motion for new trial, or motion to set aside proceedings, or motion for a change of venue, including instructions, or any other necessary attendance, where no counsel employed ... ..	0	15	0
Attending in the last-mentioned cases with counsel ... ..	0	10	0
Fee to counsel and clerk ... ..	1	3	6
Any attendance at the office of the registrar, which he may, upon taxation, think was necessary ... ..	0	3	0
Every bond given under sec. 70 of 19 & 20 Vict. c. 108 ... ..	0	7	0

### *New Trial.*

Costs to be allowed on the same scale as on the original trial.

Costs of the day on adjournment of cause.

Attorney for attending court where no counsel employed ... ..	0	15	0
Attending with counsel ... ..	0	10	0
Refresher fee to counsel and clerk ... ..	1	3	6

Witnesses' expenses, same as on trial.

### *Arbitration.*

Attending reference, without counsel, for each sitting ... ..	1	0	0
Attending reference, with counsel, for each sitting ... ..	0	15	0
Fee to counsel and clerk, for each sitting, sum paid, not exceeding ... ..	2	4	6
Witnesses' expenses, same as on a trial.			

NOTE.—Costs of counsel and attorney, or of an attorney on attending reference, shall not be allowed without the order of the judge; nor shall the costs of more than one sitting be allowed without the order of a judge.

Costs in actions under 19 & 20 Vict. c. 108, section 23, shall be taxed according to the scale of taxation used in the Court of Queen's Bench, so far as it is directly applicable; and where it is not so applicable, the principle of that scale shall be followed.

### *Costs on Appeals.*

	£	s.	d.
Preparing notice of appeal, including copies and service ... ..	0	5	0
Paying money into court as deposit on appeal, including notice and service thereof ... ..	0	3	0
Notice of nature and particulars of proposed security, including copies and service ... ..	0	3	0
Notice of court to which appeal to be made ... ..	0	8	0
Preparing case, including copies ... ..	0	10	0
Attending judge to sign, or to settle and sign case ... ..	0	3	0
Transmitting copies of case, including depositing the same ... ..	0	3	0
Transmitting case and copies, including notice and service thereof ... ..	0	3	0
Application to judge for leave to proceed on the judgment ... ..	0	5	0

Depositing order of Court of Appeal, including notice and service thereof ... 0 8 0

Where a new trial takes place in pursuance of the directions of the Court of Appeal, the costs of such new trial shall be allowed on the same scale as in the case of a new trial granted by the judge of the county court.

N. B.—The costs in every cause shall upon the above scale abide the event, unless the judge shall make some special order with reference to such costs or any part thereof.

In pursuance of the powers vested in us by the appointment of the Lord Chancellor, under the provisions of the statute 19 & 20 Victoria, chapter 108, we, John Herbert Koe, Edward Cooke, John Worlledge, and William Furner have framed the above Scale of Costs and Charges to be paid to counsel and attorneys in the county courts; and we do hereby certify the same to the Lord Chancellor accordingly.

JOHN HERBERT KOE. JOHN WORLEDGE.  
EDWARD COOKE. WILLIAM FURNER.

I approve of this Scale to come into operation in all county courts on the 1st day of November next.  
CRANWORTH, C.

October 9th, 1856.

## STATUTES NOT IN USE REPEAL.

(19 & 20 Vict. c. 64).\*

An Act to repeal certain Statutes which are not in Use. [21st July, 1856].

BE it enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the acts hereinafter mentioned, together with all enactments (if any) confirming, continuing, or perpetuating the same or any of them, are hereby repealed: Provided always, that such repeal shall not affect any legal proceeding commenced under any of the said acts before the passing of this act.

Statute of Westminster the Second: 13 Edw. 1, c. 38.—Lands where Crosses be set shall be forfeited as Lands aliened in Mortmain.

Statute of Westminster the Second: 13 Edw. 1, c. 41.—*A Contra formam collationis* and a *Cessavit* to recover Lands given in Alma.

Articuli super Chartas: 28 Edw. 1, c. 5.—The Chancellor and the Justices of the King's Bench shall follow the King.

Articuli super Chartas: 28 Edw. 1, c. 20.—Vessels of gold shall be essayed; touched, and marked; the King's Prerogative shall be saved.

5 Edw. 8, c. 14.—Night Walkers and suspected Persons shall be safely kept.

Statute of Nottingham: 10 Edw. 3, stat. 3.—*De cibariis utendis*.

25 Edw. 3, stat. 5, c. 22.—He that purchaseth a Provision in Rome for an Abbey shall be out of the King's Protection, and any man may do with him as with the King's Enemy.

28 Edw. 3, c. 10.—The Penalty of the Mayor, Sheriffs, &c., of London, if they do not redress

Errors and Misprisions there, and in what Counties the Trial thereof shall be.

87 Edw. 3, c. 15.—Clothiers shall make Cloths sufficient of the aforesaid Prices, so that this Statute for Default of such Cloths be in nowise infringed.

6 Ric. 2, stat. 1, c. 9.—No Victualler shall execute a judicial Place in a City or Town Corporate.

7 Ric. 2, c. 18.—No Man shall ride in Harness within the Realm, nor with Launcegays.

12 Ric. 2, c. 12.—In what Cases the Lords and Spiritual Persons shall be contributory to the Expenses of the Knights of Parliament.

12 Ric. 2, c. 18.—The Punishment of them which cause Corruption near a City or great Town to corrupt the Air.

18 Ric. 2, stat. 1, c. 8.—The Rates of Labourers' Wages shall be assessed and proclaimed by the Justices of Peace, and they shall assess the Gains of Victuallers who shall make Horsebread, and the Weight and Price thereof.

17 Ric. 2, c. 4.—Malt sold to London shall be cleansed from the Dust.

17 Ric. 2, c. 10.—Two learned Men in the Law shall be in Commission of Jail Delivery.

20 Ric. c. 1.—No Man shall ride or go armed; Launcegays shall be put out.

20 Ric. 2, c. 2.—Who only may wear another's Livery.

1 Hen. 4, c. 15.—The Punishment of the Mayor, &c., of London for Defaults committed there

4 Hen. 4, c. 5.—Every Sheriff shall in Person continue in his Bailiwick, and shall not let it.

4 Hen. 4, c. 10.—The Third Part of the Silver bought to the Bullion shall be coined in Halfpence and Farthings.

4 Hen. 4, c. 25.—An Hostler shall not make Horsebread. How much he may take for Oats.

4 Hen. 4, c. 27.—There shall be no Wasters, Vagabonds, &c., in Wales.

4 Hen. 4, c. 29.—Welshmen shall not be armed.

5 Hen. 4, c. 2.—The Penalty of him which procureth Pardon for an Approval that committeth Felony again.

5 Hen. 4, c. 13.—What Things may be gilded and laid on with Silver and Gold, and what not.

7 Hen. 4, c. 7.—Arrowheads shall be wellboded, brased, and hard.

11 Hen. 4, c. 1.—The Penalty on a Sheriff for making an untrue Return of the Election of the Knights of Parliament.

1 Hen. 5, c. 4.—Sheriff's Bailiffs shall not be in the same Office in Three Years after; Sheriff's Officers shall not be Attorneys.\*

2 Hen. 5, stat. 2, c. 4.—There shall be no gilding of Silver Ware but of the Alloy of English Sterling.

4 Hen. 5, stat. 2, c. 6.—Penalty on Irish Prelates for collating an Irishman to a Benefice in England or bringing an Irishman to Parliament to discover the Counsels of Englishmen to Rebels.

8 Hen. 5, c. 8.—What Things only may be gilded and what laid on with Silver.

9 Hen. 5, stat. 1, c. 10.—Keels that carry Sea Coals to Newcastle shall be measured and marked.

1 Hen. 6, c. 3.—What Sort of Irishmen only may come to dwell in England.

6 Hen. 6, c. 4.—The Sheriff's Traverse to an Inquest found touching returning Knights of Shires for the Parliament.

8 Hen. 6, c. 22.—What is requisite to be done in

\* These repealed acts form a curious history of law-making during nineteen reigns.

\* The 6 & 7 Vict. c. 73, repealed this act as to attorneys.

- winding and packing of Wool. None shall force, clack, or beard any Wool.
- 11 Hen. 6, c. 1.—They that dwell at the Stews in Southwark shall not be impelled in juries nor keep any inn or tavern but there.
- 18 Hen. 6, c. 18.—How much a Captain shall forfeit that doth detain any Part of his Soldier's Wages.
- 23 Hen. 6, c. 4.—Welshmen indicted of Treason or Felony that do repair unto Herefordshire shall be apprehended and imprisoned or else pursued by Hue and Cry, and a Forfeiture of those which do not pursue them.
- 28 Hen. 6, c. 5.—The Penalty of the Officers of the Customs which by Colour of their Offices shall distrain any Man's Ships or Goods.
- 4 Edw. 4, c. 8.—No Stranger shall buy English Horns unwrought gathered or growing in London or within Twenty-four Miles thereof. Certain Powers vested in the Wardens of the Horners of London.
- 17 Edw. 4, c. 4.—An Act for making of Tile.
- 4 Hen. 7, c. 2.—An Act for Finers of Gold and Silver.
- 4 Hen. 7, c. 3.—An Act that no Butcher slay any Manner of Beast within the Walls of London.
- 4 Hen. 7, c. 16.—An Act concerning the Isle of Wight.
- 11 Hen. 7, c. 19.—An Act against Upholsterers.
- 11 Hen. 7, c. 21.—An Act against Perjury.
- 11 Hen. 7, c. 27.—An Act against unlawful and deceitful making of Fustians.
- 19 Hen. 7, c. 6.—Pewterers walking.
- 19 Hen. 7, c. 10.—De voluntariis et negligentibus escapiis.
- 3 Hen. 8, c. 14.—An Act for the searching of Oils within the City of London.
- 4 Hen. 8, c. 7.—*Pur le Pewterers*.
- 5 Hen. 8, c. 4.—An Act for avoiding Deceits in Worsteds.
- 14 & 15 Hen. 8, c. 2.—The Act concerning the taking of Apprentices by Strangers.
- 14 & 15 Hen. 8, c. 3.—The Act concerning the draping of Worsteds, Sayas and Stamins for the Town of Great Yarmouth.
- 14 & 15 Hen. 8, c. 12.—An Act concerning coining of Money.
- 21 Hen. 8, c. 12.—An Act for true making of great Cables, Halsers, Ropes, and all other Tackling for Ships, &c., in the Borough of Burport in the County of Dorset.
- 21 Hen. 8, c. 16.—An Act ratifying a Decree made in the Star Chamber concerning Strangers Handicraftsmen inhabiting the Realm of England.
- 22 Hen. 8, c. 10.—An Act concerning Egyptians.
- 24 Hen. 8, c. 10.—An Act made and ordained to destroy Choughs, Crows, and Rooks.
- 25 Hen. 8, c. 5.—An Act for calendering of Worsteds.
- 25 Hen. 8, c. 9.—An Act concerning Pewterers.
- 25 Hen. 8, c. 13.—An Act concerning Farms and Sheep.
- 25 Hen. 8, c. 18.—An Act for Clothiers within the Shire of Worcester.
- 26 Hen. 8, c. 5.—An Act that Keepers of Ferries on the Water of Severn shall not convey in their Ferry Boats any manner of Person, Goods, or Chattels after the Sun going down till the Sun be up.
- 26 Hen. 8, c. 6.—An Act that Murders and Felonies done or committed within any Lordship Marcher in Wales shall be inquired of at the Sessions holden within the Shire Grounds next adjoining, with many good Orders for Administration of Justice there to be had.
- 26 Hen. 8, c. 16.—An Act for the making of Worsteds in the City of Norwich, and in the Towns of Lynn and Yarmouth.
- 32 Hen. 8, c. 13.—For Breed of Horses.
- 33 Hen. 8, c. 16.—An Act for Worsteds Yarn in Norfolk.
- 34 & 35 Hen. 8, c. 10.—An Act for the true making of Coverlets in York.
- 35 Hen. 8, c. 11.—An Act for the due Payment of the Fees and Wages of Knights and Burgesses for the Parliament in Wales.
- 1 Edw. 6, c. 6.—An Act for the Continuance of making of Worsteds Yarn in Norfolk.
- 2 & 3 Edw. 6, c. 9.—An Act for the true currying of Leather.
- 2 & 3 Edw. 6, c. 11.—An Act for the true tanning of Leather.
- 2 & 3 Edw. 6, c. 19.—An Act for Abstinence from Flesh.
- 2 & 3 Edw. 6, c. 27.—An Act against the false forging of Gadsds of Steel.
- 3 & 4 Edw. 6, c. 2.—An Act for the true making of Woollen Cloths.
- 3 & 4 Edw. 6, c. 9.—An Act for the buying of raw Hides and Calf Skins.
- 5 & 6 Edw. 6, c. 6.—An Act for the making of Woollen Cloth.
- 5 & 6 Edw. 6, c. 24.—An Act for the making of Hats, Dornecks, and Coverlets at Norwich and in the County of Norfolk.
- 7 Edw. 6, c. 5.—An Act to avoid the great Price and Excess of Wines.
- 7 Edw. 6, c. 7.—An Act for the Assize of Fuel.
- 1 Mary, stat. 3, c. 8.—An Act touching the buying and currying of Leather.
- 1 & 2 Ph. and M. c. 4.—An Act for the Punishment of certain Persons calling themselves Egyptians.
- 1 & 2 Ph. and M. c. 7.—An Act that Persons dwelling in the Country shall not sell divers Wares in Cities or Towns Corporate by Retail.
- 1 Eliz. c. 8.—An Act touching Shoemakers and Curriers.
- 1 Eliz. c. 9.—An Act touching Tanners and the selling of tanned Leather.
- 1 Eliz. c. 15.—An Act that Timber shall not be felled to make Coals for the making of Iron.
- 5 Eliz. c. 8.—An Act touching Tanners, Curriers, Shoemakers, and other Artificers occupying the cutting of Leather.
- 8 Eliz. c. 8.—An Act for the Repeal of a Branch of a Statute made Anno 32 H. 8, for the Statute of Horses within the Isle of Ely, and other Places confining thereunto.
- 8 Eliz. c. 9.—An Act to repeal a Branch of the Statute made Anno 23 H. 8, touching the Prices of Barrels and Kilderkins.
- 8 Eliz. c. 10.—An Act for Bowyers and the Prices of Bows.
- 8 Eliz. c. 12.—An Act for the Aulneger's Fees in Lancashire, and for Length, Breadth, and Weight of Cottons, Prizes, and Rugs.
- 23 Eliz. c. 5.—An Act touching Iron Mills near unto the City of London and the River of Thames.
- 28 Eliz. c. 8.—An Act for the true melting, making, and working of Wax.
- 27 Eliz. c. 19.—An Act for the Preservation of Timber in the Wealds of the Counties of Sussex, Surrey, and Kent, and for the Amend-



ment of Highways decayed by Carriages to and from Iron Mills there.

85 Eliz. c. 9.—An Act touching Breadth of Cloths.

1 Jac. 1, c. 6.—An Act made for the Explanation of the Statute made in the Fifth Year of the late Queen Elizabeth's Reign concerning Labourers.

1 Jac. 1, c. 20.—An Act for Redress of certain Abuses and Deceits used in painting.

3 Jac. 1, c. 9.—An Act for the Relief of such as lawfully use the Trade and Handicraft of Skinners.

3 Jac. 1, c. 16.—An Act for the Repeal of One Act made in the Fourteenth Year of Queen Elizabeth's Reign concerning the Length of Kersies.

3 Jac. 1, c. 17.—An Act concerning Welsh Cottons.

4 Jac. 1, c. 2.—An Act for the true making of Woollen Cloth.

4 Jac. 1, c. 6.—An Act for Repealing of so much of One Branch of a Statute made in the First Year of His Majesty's Reign, intituled "An Act concerning Tanners, Curriers, Shoemakers, and other Artificers occupying the cutting of Leather," as concerneth the sealing of sheep-skins, and to avoid selling of tanned Leather by Weight.

21 Jac. 1, c. 18.—An Act for Continuance of a Statute made for the making Woollen Cloths.

21 Jac. 1, c. 21.—An Act concerning Hostlers and Innholders.

12 Car. 2, c. 32.—An Act for prohibiting the Exportation of Wool, Wool Fells, Fullers Earth, or any kind of scouring Earth.

14 Car. 2, c. 18.—An Act against ex-orting of Sheep, Wool, Woolfells, Mortlings, Shorlings, Yarn made of Wool, Wool Flocks, Fullers Earth, Fulling Clay, and Tobacco Pipe Clay.

& 6 W. & M. c. 18.—An Act to repeal the Statute made in the Tenth Year of King Edward the Third for finding Sureties for the good behaving by him or her that hath a Pardon of Felony.

9 & 10 Will. 3, c. 40.—An Act for the Explanation and better Execution of former Acts made against Transportation of Wool, Fullers Earth, and Scouring Clay.

10 Will. 3, c. 2.—An Act to prevent the making or selling of Buttons made of Cloth, Serge, Druggot, or other Stuffs.

1 Anne, stat. 1, c. 16.—An Act for preventing Frauds in the Duties upon Salt, and for the better Payment of Debentures at the Custom House.

8 Anne, c. 11.—An Act for employing the Manufacturers by encouraging the Consumption of Raw Silk and Mohair Yarn.

4 Geo. 1, c. 7.—An Act for making more effectual an Act made in the Eighth Year of the late Queen Anne, intituled "An Act for employing the Manufacturers by encouraging the Consumption of Raw Silk and Mohair Yarn."

7 Geo. 1, stat. 1, c. 12.—An Act for employing the Manufacturers and encouraging the Consumption of Raw Silk and Mohair Yarn by prohibiting the wearing of Buttons and Button-holes made of Cloth, Serge, and other Stuffs.

11 Geo. 2, c. 28.—An Act for the better regulating the Manufacture of narrow Woollen Cloths in the West Riding of the County of York.

10 Geo. 3, c. 49.—An Act for continuing and amending several Acts for preventing Abuses in making Bricks and Tiles.

17 Geo. 3, c. 42.—An Act for preventing Abuses in the making and vending Bricks and Tiles.

## LAW OF ATTORNEYS AND SOLICITORS.

### ORDER OF COURSE FOR TAXATION WHERE SPECIAL AGREEMENT.

It appeared that in 1849 Thomas Nadin employed Mr. Thomas Ingle as his solicitor in a suit of *Marshall v. Nadin*, instituted against him in reference to certain railway shares of which he had become the purchaser and the registered owner, and the certificates of which had been deposited in court under an order obtained for that purpose. Upon the death of Nadin, in 1851, his widow administered to his estate, and in December, 1852, Mr. Ingle delivered her his bills of costs, amounting to £299 odd. Mr. Ingle died in 1853, and his son continued to act as Mrs. Nadin's solicitor in the suit. She had declared herself unable to pay the bills of costs except out of the proceeds of the sale of the shares, and had complained of the amount of the bills, and expressed a desire to be relieved from all liability in respect thereof, and of future costs.

The certificates of shares were directed by order in the suit, in February, 1855, to be delivered to Mrs. Nadin, but she declined to authorise Mr. Ingle to sell them, and pay the costs of the sale and of the suit, except on the terms of his not looking to her personally for payment of any deficiency. Mr. Ingle afterwards agreed to this, and on the parties meeting to carry out the arrangement, Mr. Ingle produced two documents, one to be signed by Mrs. Nadin, and the other by himself, and also delivered a bill of costs for £9 9s. 5d. as due to his father, and another for £115 1s. 8d. due to himself. Mrs. Nadin was an illiterate person, but was accompanied by two friends, and Mr. Ingle read over the document she was to sign, and which authorised him, in consideration of his not looking to her for any money in payment of the bills over and above the proceeds of the sale of the shares, to sell the same, and stand possessed of the proceeds (in his individual capacity, and not as her solicitor or agent), in trust to pay the bills of costs then due or thereafter to be charged by him in and about the business, and to pay her over the surplus, stating it to be £200 or £300, on the supposition that several years' dividends were due on the shares. Mrs. Nadin executed the agreement, but protested against the amount of the bills and Mr. Ingle's conduct. The shares sold for £463 15s., and Mr. Ingle tendered the balance, £53, which she refused to accept, and employed another solicitor, who applied for a copy of the document signed by her, and for the vouchers, but which Mr. Ingle refused to give, referring the solicitor to Mrs. Nadin.

The common order for a taxation was thereupon obtained, and Mr. Ingle now moved to discharge it.

The *Master of the Rolls* said: "The questions which arise in this case are, first, whether the agreement which was signed by Mrs. Nadin, the client, precludes the taxation of the bills, and if it does not, then secondly, whether it was of sufficient importance to make it necessary to state it to the officer of the court on the application for the taxing order, in which case he would not have granted the order, and a special application would have been necessary, for the purpose of obtaining the decision of the court as to whether the bills ought to be taxed, and lastly, whether there is any excuse for not adopting that course.

In the first place, I have no doubt that the agree-

## LAW OF COSTS.

OF ADMINISTRATION SUIT PAYABLE BY EXECUTORS  
WHERE DEFAULT.

ent was as stated, viz., one by which, in consideration of Sarah Nadin being released from personal liability, the solicitor was contented to look to the produce of the railway shares for the payment of the bills of costs, and the client on her part agreed to the amount of the bills of costs. Such an agreement might have been perfectly good, if entered into by persons who understood their situation; but such is not the case here. Leaving out of the question that she was a very illiterate person, the bill was delivered at the time, and she had no means of knowing whether it was a proper bill or not, and it was impossible to obtain proper advice. Besides this, it does not appear that the value of the railway shares was known; and if it exceeded the amount of all the bills, she obtained no advantage by the arrangement, and received no consideration for agreeing to the particular amount of these bills. I am clearly of opinion that the circumstances of this case, as appearing from the affidavits, are such that this court would not allow the agreement to supersede the taxation of the bills.

As to payment, there was none; the solicitor was to retain, out of the money to be received by him, the amount of his bill. Payment must either be actual payment in money, or an agreement by the client, on the settlement of accounts between him and his solicitor, that the amount shall be retained.

The next question is much more difficult, and if a copy of the agreement had been in the hands of Mrs. Nadin at the time she obtained the order of course to tax the bills, I should have been of opinion that the order of course had not been properly obtained. The circumstances are very peculiar. It is observed, with justice, that Mrs. Nadin was aware that some agreement existed, though she did not know the terms of it. If, when her solicitor applied for a copy of it, Mr. Ingle had furnished one, I should have discharged this order of course. But Mr. Ingle, when applied to, says, 'I refer you to your client,' he knowing perfectly well that the client had no copy of it, for she could only have it through him, and it had never been out of his possession. She must have known that some agreement existed, but it was not likely that she retained in her memory the particulars of it, for it is one page in length. There is, therefore, some excuse for not setting it out in her petition for the order of course, though she knew there was one. She ought to have applied to the solicitor, and said, 'do you object to an order of course?' and if he did, then she should have presented a petition to the court for taxation, stating that there was an agreement, and that she could not obtain a copy of it.

"There is this difficulty in all these cases, that if the agreement be such as not to affect the right of taxation, you need not mention it; but, if on the contrary, there is a point for the decision of the court before the client could be entitled to an order for taxation, a special petition is necessary. It is sometimes very difficult to decide which course to take. I think Mrs. Nadin was not right in the course she took, but that the solicitor was wrong in refusing the copy of the agreement; I shall not set aside the order, and I shall give no costs of the motion."

*In re Ingle*, 21 Beav. 275.

A TESTATRIX by her will dated in December, 1846, gave all her estate and effects to two trustees, in trust to sell and convert into money, and after payment of her debts, &c., to pay and divide the same in sixth parts among the persons named in the will. The legatees were unable to obtain payment of their legacies, and a sum of £278 odd remained uninvested for seven years.

On a bill filed by four of the legatees to administer the estate, the Vice-Chancellor *Stuart* said:—

"In dealing with executors and trustees, the court is bound to regard their conduct not only fairly, but, where their conduct has been honest and diligent, even with indulgence.

"In this case seven years had elapsed from the death of the testatrix before the institution of this suit. The law allows one year for the conversion of the assets, and, according to the rule of this court, the executors, after the expiration of that period, ought to have been in a position to pay and distribute the residue, or to show some sufficient reason why payment could not then be made.

"The evidence in this case discloses general neglect and misconduct. It is objected, on behalf of the defendants, that the plaintiffs ought not to have entered into evidence at all, because the bills contain no specific allegations of wilful default, and that the plaintiffs are therefore only entitled to the common decree for an account. It is alleged that the testatrix being dead seven years, the debts and legacies ought long ago to have been paid, and the assets distributed. That is an allegation amounting to a charge of neglect, and is preferred as the basis of the prayer, which asks that the defendants should pay the costs of the suit. The bill containing such an allegation, it was the duty of the plaintiffs to substantiate by evidence the case of undue delay and neglect, and of the defendants, in their answer, specifically to explain why seven years had been allowed to elapse before the residue was distributed. Their answer, however, does not attempt to explain the delay, which without such explanation must be treated as wilful neglect. But even had they stated specific circumstances of justification, according to the strict rules of this court, the plaintiffs would have been entitled to enter into evidence, not only as to the allegations in the bill, but also as to the case made by way of defence. In support of the defendants' view, the cases of *Law v. Hunter*, 1 Russ. 100, and *Hamilton v. McCormick*, 8 J. and L. 188, have been cited; but those authorities have no application, for they only show that where the object of the suit was to take an account, and the plaintiff entered into evidence for the purpose of having a particular item disallowed, the costs of that evidence were thrown upon him.

"Here the evidence is relevant to the charge which the bill, by its prayer seeking to visit them with costs, informed the defendants would be made against them.

"Moreover, the evidence objected to is the testimony of the defendants themselves, who were examined under the new practice, and it is difficult to see how the testimony of the parties whose conduct was arraigned could be other than relevant, especially in a suit where it was asked that they might pay the costs.

"Upon the whole, the unexplained delay in the payment of the legacies and general winding-up of the estate are sufficient to entitle the plaintiffs to the decree they ask, that the executors shall pay the costs of the suit. Circumstances may frequently occasion great delay in the administration of an estate, but where they occur the executors are bound to state them to the court.

"Reference has been made to a case before Lord Cottenham (*Stiles v. Guy*, 1 M. and G. 481), where that learned judge treated of the obligation on executors and trustees to pay reasonable attention to the discharge of the duties they undertake by acceptance of their office, and held one executor liable for the default of his co-executor. Here both executors are equally culpable and negligent, so that this case is free from any question of the liability of one executor to answer for the misconduct of the other. It is said, indeed, at the bar that one of them has recently become insolvent, but it is the right of the plaintiffs to have a decree against both executors. I think I am able, on the evidence before me (neither party insisting on a decree for an account), to make a decree that will meet the exigencies of the case, and I shall direct the executors to pay the whole costs of the suit up to the hearing."

*Tickner v. Smith*, 3 Smale and G. 42.

## THE PUNISHMENT OF DEATH.

THE recent discussions on the punishment of death, and particularly the report of the select committee of the House of Lords on that subject,\* induce us to submit to our readers some extracts from Mr. Amos's learned work, quaintly called "The Ruins of Time," exemplified in Sir Matthew Hale's "History of the Pleas of the Crown." He says:—

"The 'History of the Pleas of the Crown' may be said to be written, like the laws of Draco, not with ink, but in blood. The penalties for every offence stated in it, with a few insignificant exceptions, are the gibbet, the axe, the flaming stake, or the disembowelling knife. Sir M. Hale states, indeed, a sound principle of jurisprudence, that the 'inflicting of punishments is more for example, and to prevent evils, than to punish:' but he mixes some leaven with this wholesome doctrine, adding, 'only in the case of murder there seems to be a justice of retaliation, if not *ex lege naturali*, yet at least by a general divine law given to all mankind. Gen. ix., 6.' And concerning theft, which he afterwards informs us was punishable with death if the property stolen exceeded in value twelvepence, he writes, 'Although many of the schoolmen and canonists are of opinion that death ought not to be inflicted for theft, yet the necessity of the peace and well ordering of the kingdom hath in all ages and almost all countries prevailed against that opinion, and annexed death as the punishment of theft, when the offence hath grown very common, and been accompanied with enormous circumstances.' To the schoolmen and canonists Sir M. Hale might have added Sir T. More, who, in his 'Utopia,' thought that in the punishment of theft with death, England and a great part of the world imitated some ill masters, who were readier to chastise their scholars than to teach them.

"Retaliation, in the case of alleged murder, had

been advocated, in language shocking to read, in Sir M. Hale's presence, when he sat as commissioner for the trials of the regicides. Sir Orlando Bridgman, in his charge to the grand jury, said, 'You are now to inquire of blood, of royal blood, of sacred blood, blood like that of the saints under the altar, crying *Quousque Domine!* This blood cries for vengeance, and will not be appeased without a bloody sacrifice.' And, in the same vindictive spirit, the dead bodies of Cromwell, Bradshaw, and Ireton were taken out of their coffins, drawn on sledges to Tyburn, and there hanged till sunset; they were then beheaded, and their heads set upon poles at the top of Westminster Hall.

"The supposed 'justice of retaliation' in cases of murder was a principle of the Roman law, according to which the bodies of murderers were permitted to remain on the gibbet, after execution, '*et ex conspectu deterreantur alii, et solatio sit cognatis interceptorum.*' In the reign of George II., and the year 1741, one Hall pleaded guilty to a charge of petty treason, for murdering his master, John Penney. The Rev. Dr. Penney, Dean of Lichfield, brother of the deceased, applied to the Regency, the King being then at Hanover, that Hall might be hanged in chains. The council at first demurred, on the ground of want of jurisdiction; but, upon Dr. Penney sending for his friends, the Archbishop of Canterbury and the Duke of Newcastle, out of the council-room, and satisfying them upon the point of jurisdiction, they obtained for him an order of the regency for hanging Hall in chains, which recited that it had been granted 'on the petition of the relations of the deceased.'"

On the subject of *benefit of clergy*, Mr. Amos observes:—

"When it was ascertained that an offence was clergyable, a perversion of justice ensued, which nothing but long habituation could have restrained. Sir M. Hale from reprobating. A clergyman was thereby exempt from capital punishment *toties quoties*, as often as from acquired habit, or otherwise, he repeated the same species of offence; the laity, provided they could read, were exempted only for a first offence; for a second, though of an entirely different nature, they were hanged. Among the laity, however, there was this distinction, peers and peeresses were discharged for their first fault without reading, or any punishment at all; commoners, if of the male sex and readers, were branded in the hand. Women commoners had no benefit of clergy. It occasionally happened in offence committed jointly by a man and a woman, that the law of *garfinkind* was parodied—

The woman to the bough,  
The man to the plough."

Regarding the effect of public executions on the mind of criminals, Mr. Amos says:—

"The infliction of death, that last melancholy

"\* Kelyng reports:—At the Lent assizes for Winchester (18 Car. II.) the clerk appointed by the bishop to give clergy to the prisoners, being to give it to an old thief, I directed him to deal clearly with me, and not to say *legis* in case he could not read; and thereupon he delivered the book to him, and I perceived the prisoner never looked on the book at all; and yet the bishop's clerk, upon the demand of '*legit*?' or *non legit*?' answered '*legit*.' And, thereupon, I told him I doubted he was mistaken, and had the question again put to him; whereupon he answered again, somewhat angrily, '*legit*.' Then I bid the clerk of assize not to recede it, and I told the person that he was not the judge whether the culprit could read or no, but a ministerial officer to make a true report to the court, and so I caused the pri-

\* See p. 301, ante.

resource of jurisprudence a reluctance to sanction which is a sure indication of the progress of civilisation in a country, may be considered to have some peculiar advantages. It may be supposed more effectual than any secondary punishment in deterring from guilt, by reason of its appalling example. This is doubtless, its operation on many minds, but it has been shown by the evidence of persons peculiarly conversant with the habits and modes of thinking among the criminal classes of society, that the vicious part of the community are not materially influenced by the terrors of the scaffold. Mr. Harmer, the celebrated gaol solicitor stated, in his evidence before the Criminal Law Commissioners, that, 'In the course of my experience I have found that the punishment of death has no terror on a common thief. I have very often heard thieves express their great dislike of being sent to the house of correction or the hulks, but I never heard one say that he was afraid of being hanged.'

And, further on, we have the following historical remarks:—

"A very practical view of the subject of capital punishments is, that under a popular tribunal as a jury, they cannot be enforced, when, in public opinion, they are deemed unnecessary, or disproportionate to crimes; thus verifying the reflection of Lord Bacon, that, "any over-great penalty, besides the acerbity of it, deadens the execution of the law." In the time of Blackstone there were a hundred and sixty capital felonies, and this number was afterwards largely augmented. It is mentioned in the evidence of Townsend, the Bow-street officer, before the police committee, that about the year 1780, and few subsequent years, there were never less than twelve culprits executed together after every Old Bailey Sessions; he remembered a sessions of 1783, when Sergeant Adair was recorder, after which forty convicts were hanged at two executions.†

"Chief Justice Eyre seems in this respect of hanging to have merited the sobriquet given to a French judge of *coupe-tête*—for, at Hertford, the first assize town upon the Home Circuit, he told the grand jury to be careful what bills they found, for it was his intention, during the circuit, to leave for execution every person convicted of a capital offence. He kept his word, and spared no one; by one of his orders four men and three women were hanged opposite a

scarcely to be brought near, and delivered him the book, when he confessed that he could not read. Whereupon I told the person that he had unpreached more that day than he could preach up again in many days, and I fined him five marks. An instance of humanity is mentioned by Donne, of a culprit convicted of a non-clergyable offence prompting a currier for a clergyable one in reading his *ack-verse*. In the very curious collection of *prolegomena* to Coryat's *Crudities* are commendatory lines by Inigo Jones, whose fame was in building palaces and churches, and not the 'lofty rhyme.' The famous architect wrote—

'Whoever on this book with scorn would look,  
May he at sessions crave, and want his book.'

† "In the present day, Lord Bacon would, probably, not have inscribed among his apophthegms the following anecdote of his father:—Sir Nicholas Bacon, being appointed a judge for the Northern Circuit, and having brought his trials that came before him to such a pass, as the passing of sentence on malefactors, he was by one of the malefactors mightily importuned for to save his life; which, when nothing he had said did avail, he at length desired his mercy on account of kindred. 'Prithee,' said my lord judge, 'how came that in?' 'Why, if it please you, my lord, your name is Bacon, and mine is Hog, and in all ages, Hog and Bacon have been so near kindred, that they are not to be separated.' 'Ay, but,' replied Judge Bacon, 'you and I cannot be kindred except you be hanged; for Hog is not Bacon until it be well hanged.'

house in Kent-street, in which they had committed a robbery. The royal prerogative of mercy was exchanged for the painful one of selecting victims for the scaffold.

"Within the last century, however, it was found that, in most instances, capital punishments failed to produce the only effect that could justify their infliction. Our criminal laws lost their terror in the minds of the virtuous. There came to be acknowledged two criminal codes, one in the statute book, and another in practice. Prosecutors preferred to abide without remedy, rather than seek one tainted with blood. The bleachers petitioned Parliament to protect them by withdrawing the capital punishment of stealing from bleaching grounds. Whether actuated by the dictates of humanity or a timid apprehension of responsibility in any matter of life and death, or from both motives, the perjury of witnesses and jurors in capital cases became so privileged and applauded, that Blackstone calls them 'pious perjuries;' thus, as Sir S. Romilly observes, 'looking upon the evasion of our criminal laws with so much favour, as to regard the profanation of the name of God in the very act of administering justice to men, as that which is in some degree acceptable to the Almighty, and as partaking of the nature of a religious duty.'

"Were the 'History of the Pleas of the Crown' to be read in the present day, as detailing a true narrative of existing law, and being, what in the time of Charles II. it really was, a practical handbook to the gibbet, its denunciations would, for the most part, meet with no jury to put them in force; and its sanguinary pages would be regarded by society as promulgating the abhorred edicts of a legislature of fiends.

## MICHAELMAS TERM EXAMINATION.

THE Examiners have appointed to take the examination of persons applying to be admitted attorneys on Wednesday, 12th November, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society in Chancery-lane. The examination will commence at ten o'clock precisely.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left at the Office of the Law Society, on or before Saturday, the 8th of November.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally; but the articles must be left within the first seven days of term, and answers up to that time. If part of the term has been served with a *barrister*, *special pleader*, or *London agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary; 2. Common and Statute Law, and Practice of the Courts; 3. Conveyancing; 4. Equity, and Practice of the Courts; 5. Bankruptcy, and Practice of the Courts; 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (No. 1); and also to answer in *three* of the other heads of inquiry, viz.: *Common Law*, *Conveyancing*, and *Equity*.

The examiners will continue the practice of pro-

posing questions in *Banruptcy* and in *Criminal Law* and *Proceedings before Justices of the Peace*, in order that Candidates who may have given their attention to these subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their general examination.

Under the new rules of Hilary Term, 1853, it is provided that every person who shall have given notices of examination and admission, and "who shall not have attended to be examined, or not have passed the examination, or not have been admitted, may *within ONE WEEK after the end of the term* for which such notices were given *renew* the notices for examination or admission *for the then next ensuing term*, and so from time to time as he shall think proper; but shall not be admitted until the last day of the term, unless otherwise ordered. This rule has been made in order to avoid the practice of giving double notices.

## NOTES OF THE WEEK.

### PROROGATION OF PARLIAMENT.

It is ordered by her Majesty in Council that the Parliament, which stands prorogued to Thursday, the

13th November, be further prorogued to Tuesday, the 16th December.

### MICHAELMAS TERM EXAMINATION.

The number of candidates for examination in the ensuing term is very large. Including several who have given notice of examination and not of admission, there would be, if all attended, upwards of 160; but, as usual, a large proportion for various reasons will probably postpone their applications.

As our readers are aware, prizes are to be given out of the funds of the Incorporated Law Society to three candidates whom the examiners may report to be entitled to honorary distinction. They must be under the age of twenty-six. We hear that an objection has been made to this limitation; but understand that the reward is designed to encourage the younger class of articled clerks in a careful study of the law; and it would scarcely be a fair competition between a student of the age of twenty-one and a clerk who had the advantage of many years' experience in a solicitor's office. The masters of the several courts, who are *ex officio* examiners, concur in opinion with their associates, the members of the council of the Incorporated Law Society, in the arrangement which has been made. We understand that a memorial is about to be submitted on this subject to throw open the competition.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Pratt v. Matthew.* July 21, 1856.

MARRIAGE SETTLEMENT—CONSTRUCTION—SPECIAL CASE UNDER TURNER'S ACT—"UNMARRIED AND INTESTATE."

*A fund was settled in default of children who being sons should die under the age of 21 or being daughters under that age and unmarried, and upon the death of the wife in the lifetime of her husband, for such person or persons as would have been entitled to the wife's personal estate under the statutes of distributions as if she had died unmarried and intestate: Held, upon the death of the wife before her husband, leaving a daughter who afterwards died under 21, and confirming the decision of the Master of the Rolls, that the husband who had administered to his daughter's estate was entitled as against the wife's brothers and sisters.*

THIS was an appeal from the the decision of the Master of the Rolls on this special case under the 13 & 14 Vict. c. 85, as to the construction of the marriage settlement of the plaintiff and his wife, whereby a sum of £1,000 was settled upon certain trusts and (*inter alia*), ultimately upon trust in default of children who being sons should die under the age of twenty-one, or being daughters under that age and unmarried, and on the death of the wife in the lifetime of the plaintiff, for such person or persons as would have been entitled to the wife's personal estate under the statutes of distribution, "if she had

died unmarried and intestate." It appeared that the wife died leaving the plaintiff surviving and a daughter who subsequently died under twenty-one. The plaintiff administered to the child's estate, and claimed the fund as against the wife's brothers and sisters. The Master of the Rolls having held that he was entitled, this appeal was presented.

*Cairns* and *Archibald Smith* in support; *Lloyd* and *Hanson* contra; *Shapter*, *Karelaka*, and *Fischer* for other parties.

The Lords Justices said that the child was entitled to the fund absolutely, and the plaintiff took as administrator.

### Master of the Rolls.

*Green v. Lowe.* June 25, 1856.

SPECIFIC PERFORMANCE OF AGREEMENT—COVENANT TO INSURE—BREACH.

*By an agreement the defendant agreed, on the completion of certain buildings by the plaintiff, to grant a lease for ninety-nine years at a certain rent, and which was to contain certain stipulations and covenants, including one to insure in the County Fire Office, or in some other office, to be approved of by the defendant in the joint names of himself and the plaintiff; and it was also agreed that the defendant would, if required by the plaintiff within two years, sell the fee simple for £500, but provided such option should determine at the end of six months from such two years. The plaintiff completed the building, but*

omitted to insure in the joint names, and the defendant brought ejectment. The plaintiff then gave notice to purchase the fee simple, and tendered the agreed amount: Held, that he was entitled to a decree for a specific performance.

THIS was a suit for the specific performance of an agreement dated in December, 1854, whereby the defendant agreed, upon the completion of certain buildings by the plaintiff, to grant a lease of the ground for ninety-nine years at a rent of £25, and which was to contain certain stipulations and covenants, including a covenant to insure in the County Fire Office, or in some other office to be approved by the defendant, in the joint names of himself and the plaintiff; and it was also agreed that the defendant would, if required by the plaintiff so to do within two years from the date of the agreement, sell the fee simple for £500, but provided that such option of

purchase should determine at the end of six months after the expiration of such two years. It appeared that the plaintiff duly completed the premises, but that he insured the same in the Royal Exchange Fire Office in his sole name, and that the defendant in April, 1856, brought ejectment to recover the premises, whereupon the plaintiff, by letter, stated his intention to purchase the fee simple, and tendered the arrears of rent and the stipulated sum of £500. The defendant refused to complete, and this bill was filed.

*Lloyd and Smythe* for the plaintiff; *Southgate* for the defendant.

The *Master of the Rolls* said that the plaintiff was entitled to a specific performance, leaving the defendant to recover any damages to which he might be entitled in respect of the breach of the agreement as to the insurance.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### Common Law Appeals.

#### ERROR, SETTING ASIDE.

See *Conviction*, p. 424.

#### EVIDENCE.

See *Charterparty*, 2, p. 423.

#### FI. FA.

*Execution of, by bailiff's assistant, in bailiff's absence—Payment by judgment debtor—Sheriff*—The bailiff, to whom the sheriff had given his warrant to execute a fi. fa., sent a bailiff's assistant to execute it in the bailiff's absence, which was done.

Held, in the Exchequer Chamber, on a bill of exceptions, that a ruling of the judge at the trial that the sheriff was answerable for this act, as being done by colour of the warrant, was correct.

The judgment debtor paid the amount at the office of the bailiff, who held the warrant, in the absence of the bailiff, to an assistant of the bailiff, authorized by the bailiff to receive the money. This assistant did not pay it over to the bailiff; and the sheriff never in fact received the money.

Held, in the Exchequer Chamber, on a bill of exceptions, that a ruling of the judge at the trial that a payment under such circumstances was good as against the sheriff, and satisfied the writ, was correct. —*Gregory v. Cotterell*, 5 E. and B. 571.

#### FIXTURES.

See *Lessee*, 2.

#### FORFEITURE.

See *Bankrupt*, p. 423.

#### FREIGHT.

See *Charterparty*, 1, p. 423.

#### FRAUDULENT REPRESENTATIONS.

*In writing as to credit and circumstances of third person*—Held, overruling exceptions to the ruling of *Crowder, J.*, that an action will lie for a false repre-

sentation in writing as to the character and circumstances of a third person, whereby the plaintiff was induced to give credit to such third person, although the plaintiff might have been in part influenced by subsequent oral representations of the defendant, if the jury are satisfied that the plaintiff was substantially induced by the written representation to give the credit. *Tatton v. Wade*, 18 Com. B. 371.

#### INDEMNITY.

See *Lessee*, 1.

#### LEASE.

See *Ejectment*, p. 424; *Lessee*.

#### LESSEE.

1. *Indemnity of, by lessor after expiration of term against distress by Ecclesiastical Commissioners for tithe commutation rent-charge in arrear*.—Declaration alleged that plaintiff was tenant of a farm to defendant for a term of years, after the expiration of which there became due and payable from defendant to the Ecclesiastical Commissioners money in respect of a tithe commutation rent charged on the farm and land, which said farm and land were liable to the payment of the rent, as defendant knew; that defendant having neglected to pay it, the commissioners, according to the provisions of the statute (6 & 7 W. 4, c. 71), distrained for it a stack of wheat of plaintiff, then lawfully being on the farm and land, and afterwards sold it, in satisfaction of the sum in arrear, costs, and charges; and plaintiff was deprived of the stack; yet defendant, though he had notice of these several matters, and was requested by plaintiff to indemnify him, had not indemnified him.

Held, by the Exchequer Chamber, that the declaration showed no cause of action, the facts stated creating no liability on the part of defendant to indemnify plaintiff. *Griffiths v. Daubuz*, 5 Ellis and B. 746.

2. *Right to tenant's and trade fixtures of public-house—Covenant to deliver up fixtures and articles in nature of fixtures—Underlease*.—By indenture C.

demised to E. an unfinished messuage for the term of ninety-seven years. The indenture contained a covenant by E. that at the expiration of the term he would deliver up the demised premises to C., "together with all locks, keys, bars, bolts, marble and other chimney-pieces, footpaces, slabs, and other fixtures and articles in the nature of fixtures, which shall at any time during the said term be fixed or fastened to the said demised premises, or be thereto belonging." E. took possession of and completed the messuage, and fitted it up with things necessary for carrying on the business of a tavern-keeper and licensed victualler; and for that purpose put in the premises certain fixtures of the description called and known as trade and tenant's fixtures. B. afterwards contracted with E. to purchase from him an underlease of the premises and the goodwill, and also the furniture, fixtures, stock in trade, &c., at a valuation. In pursuance of this contract, E. executed to B. an underlease, which contained a covenant on the part of the defendant in the same words as the above covenant by E. in his lease.

*Held*, on error, that the covenant above set forth did not restrain B., the lessee, from disposing either of the tenant's or of the trade fixtures. *Bishop v. Elliott*, 11 Exch. 118.

## LIEN.

See *Consignee*, p. 424.

## "LONG WEIGHT."

See *Weights and Measures' Act*.

## MASTER.

See *Ship*.

## PHARMACEUTICAL SOCIETY ACT.

*Registration of chemists and druggists*.—Under the Pharmaceutical Society's Act, 15 & 16 Vict. c. 56, persons who, either before 18th Feb. 1848, the date of the charter (recited and in part confirmed in the act) or after that day, and before 30th June, 1852, when the act passed, were established in business on their own account as chemists and druggists, and upon a certificate of such fact, and of their qualification to be admitted members of the society, were, according to the bye-laws passed before the charter and after the act elected members of the society, are entitled to be registered as pharmaceutical chemists under the act, though they have not passed the examination prescribed in the act, and though they were not members of the society before the passing of the act.

So held by the Court of Exchequer Chamber, affirming the judgment of the Court of Queen's Bench. *Regina v. Registrar of Pharmaceutical Society*, 5 Ellis and B. 158, 160.

## PUBLIC HOUSE.

See *Lessee* 2.

## REASONABLE TIME.

See *Bankrupt*, p. 423.

## RENT CHARGE.

See *Lessee*, 1.

## REPAIRS.

See *Ship*.

## SET-OFF.

Cannot be set off of debt due in lifetime of intestate

against one due afterwards.—*Action by administrator*.

—To an action by an administrator who sues in his representative character for a debt due after the death of the intestate, the defendant cannot set off a debt due to him from the intestate in his lifetime.

So held in the Exchequer Chamber, affirming the judgment of the Court of Exchequer. *Rees v. Watts*, 11 Exch. 410.

## SHARES.

See *Bankrupt*, p. 423.

## SHERIFF.

See *Fi. fa.*

## SHIP.

*Repairs to, ordered by master in London, owner being at Liverpool*.—Action for goods sold and delivered, work, labour, and materials. Plea, never indebted. Plaintiff proved that he supplied the goods and did the work to fit out the ship P. then in London in dock. That the orders were given by T., who appeared on the register as master, and that defendant appeared on the register as owner. Some evidence was given from which it might be inferred that T. was appointed by defendant. Defendant proved that he had agreed to sell the P. to one G., that T. was appointed master by G., and gave the orders for G., and that defendant afterwards resumed possession of the vessel.

The judge directed the jury that if T. acted as master with defendant's privity and consent, and the goods were *bond fide* supplied on the credit of the owner, defendant was liable; and that, though defendant's evidence was believed, he was not conclusively entitled to a verdict. On a bill of exceptions *Held*, that defendant was not liable for the goods ordered by T., unless he had sanctioned T.'s appearing to be his captain acting for him, and the goods were supplied on the faith of T.'s being so; and consequently, that the direction was wrong.

*Quere*, whether the *prima facie* authority of the captain of a ship in dock in London extends to order repairs, the owner being no farther distant than Liverpool? *Mitcheson v. Oliver*, 5 Ellis and B. 419.

And see *Charterparty; Consignee*.

## UNDERLEASE.

See *Lessee*, 2.

## WAIVER.

See *Ejectment*, p. 424.

## WEIGHTS AND MEASURES' ACT.

*Contract for sale of iron in tons "long weight"—Local weight*.—A contract for the sale of a certain number of tons of iron "long weight" is not in contravention of the statutes 5 & 6 Will. 4, c. 63, and 5 Geo. 4, c. 74, and consequently such contract is valid. So held in the Exchequer Chamber (affirming the judgment of the Court of Exchequer).

*Semble*, that the 15th section of the 5 Geo. 4, c. 74, is not repealed by the 5 & 6 Will. 4, c. 63; and, consequently, that contracts by local weight may be lawfully made, if the proportion to the standard is expressed; though it is otherwise with respect to measures, all local measures being abolished by the 6th section of the 5 & 6 Wm. 4, c. 63. *Giles v. Jones*, 11 Exch. 393.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, NOVEMBER 1, 1856.

### STATE AND PROGRESS OF LAW REFORM.

#### GRIEVANCES OF SUITORS AND PRACTITIONERS.

WE have been accustomed at the commencement of each legal year to take a general review of the state and progress of law reform, as it affects both the suitor and the practitioner. During upwards of twenty-five years, since this periodical was commenced, many changes have taken place in the law and practice of the courts,—some of them to the advantage of the suitor, some to the convenience of the practitioner; but others to the injury of both.

It must not be supposed, however, amidst the complaints we still hear, that nothing important has been effected. It is part of the inheritance of Englishmen to grumble: it is an indication of their desire to attain perfection, especially in the administration of justice; and it cannot be denied that although much has been done in the last quarter of a century, much yet remains to accomplish. We propose to set forth some of the remaining grievances, both of the suitors and the profession,—noticing, in fairness and candour, the relief, however partial, which has been from time to time afforded.

It is proper, in the first place, to consider the interests of the *Suitors*, the clients of the profession. We would therefore call attention—

1st. To the *Taxes on the administration of justice*. And here we bear in mind that on the previous suggestion of Lord Erskine, and during the attorney-generalship of Lord Lyndhurst, the stamps on proceedings in the courts of law and equity were abolished; and that we are indebted to Lord Truro, during his chancellorship, for the relief which was afforded by transferring the payment of the salaries of the equity judges, amounting to upwards of £20,000 a-year, from the *Suitors' Fund* to the Consolidated Fund.

Next we have to notice the large fees of office and court still imposed on the suitors in the various steps of a suit in chancery. In this branch of grievance, also, Lord Truro and other Chancellors have reduced fees to the amount of several thousands a-year; but the

grievance still remains of the burden of the *compensation* on abolished offices. It may have been just that liberal pensions should be granted to the holders of office; but the State having made the change for the benefit of the community at large, should surely bear the burden, and not the unfortunate suitors of the present generation, who, in order to obtain their rights or resist unjust demands, are compelled to resort to these tribunals.

2. Another suitors' grievance is the *compulsory* submission to compromises at a trial, *references* to arbitration, nonsuits from temporary defects of evidence, or costly postponements. It must here be admitted that the last Common Law Procedure Act has provided a remedy for one of these complaints, by empowering the judge to adjourn a trial; but the practice of enforcing a reference or a compromise remains yet to be effectually resisted. A suitor has an undoubted right to demand the verdict of a jury. It rarely happens that in opposition to his counsel and attorney he resists the advice which is offered; but he has a strict right to a full hearing and a patient decision. It will not be forgotten that Lord Chancellor Lyndhurst, yielding to the demand of a firm—or it may be an obstinate—suitor, sat to hear him far into the “watches of the night.”

3. We may set down as another public grievance, affecting snitors, jurors, witnesses, and all who are in any way concerned or interested in the due administration of justice, the *distant, inconvenient, insufficient, and ill-constructed* courts adjoining Westminster Hall. They are not, in fact, as anciently, in Westminster Hall, but modern make-shifts in the vicinity. They are not sufficient in number or in size. They are not, and cannot for want of space, be supplied with the most common and ordinary accommodation for the proper discharge of the business of the courts, and the convenience of those who are in attendance. The judges and the bar are, of course, better accommodated than any other class; but even they are very insufficiently provided for. There are no libraries nor consultation rooms; no rooms for suitors, solicitors, or witnesses. Above all, nothing can be more absurd than the holding these courts in the south-west corner of the metropolis, several miles away from nine-tenths of the inhabitants. On the



other hand, a site is proposed in the very centre of London, surrounded by the chambers of 2,000 lawyers of both branches of the profession, on the borders of the Cities of London and Westminster, and calculated to accommodate under one great roof, not only all the various courts (now thrice the number of the last century), but all the offices for the transaction and despatch of business, now scattered in various inconvenient places considerably distant from each other, and occasioning much delay to the suitors, and inconvenience to their legal representatives.

So far as to a few of the further reforms which are requisite in behalf of the suitors and the public, and to these and other topics, we may hereafter advert.\*

In a subsequent number we propose to consider the principal grievances of the *practitioners*. For the present, we may concisely state them. They are—

1. Exclusion from offices of honour and distinction, which they formerly possessed or ought to enjoy, including Government solicitorships, which, contrary to the spirit of the statutes relating to attorneys, are often bestowed on members of the bar.

2. Exclusion from the inns of court, their libraries and lectures, and the extension of the time required in passing from one branch of the profession to the other.

3. Unjust and unequal taxation, especially in regard to the annual certificate duty.

4. Encroachments on the rights of solicitors by certificated conveyancers practising under the bar, not in the manner of special pleaders, advising on pleadings and evidence, but negotiating loans, and acting in all respects as solicitors in conveyancing matters.

5. In considering the invasion of the province of regularly admitted attorneys by numerous classes of agents, we may notice a large body of *Parliamentary agents*, who are not members of the profession, nor have received any regular legal education.

6. Especially the subject of the *remuneration of solicitors*, improvements in which have been so long expected, will again require to be urgently brought forward.

It must not, however, be overlooked that during the last twenty-five years several important steps have been taken by the solicitors in furtherance of their rights and interests. The formation of the Incorporated Law Society, the establishment of its lectures, library, and examinations, and its frequent applications to the superior courts to repress malpractice, with the exertions of several provincial law societies, and that of the Metropolitan and Provincial Law Association, have largely tended to raise the character and position of the attorneys and solicitors, and secured the attention of the Legislature and the respect of the press. These are great en-

\* Amongst other reforms the Ecclesiastical Courts must be considered.

couragements to persevere in more extensively uniting the general body of attorneys, and by effecting further improvements, secure the learning and respectability of the profession, and thereby promote the true interest of the public.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### MERCANTILE LAW (SCOTLAND) AMENDMENT ACT (19 & 20 Vict. c. 60).

1. Goods sold, but not delivered, not to be attachable by creditors of the seller.
2. Seller not entitled to a right of retention generally against second purchaser.
3. Arrestment and poinding of goods by seller.
4. Rights of landlord not to be affected.
5. Seller not held to warrant goods, except there be an express warranty in contract.
6. Guarantees, &c. to be in writing.
7. Guarantees to or for a firm not to be binding after any change of the firm, except in special cases.
8. Cautioners not to be entitled to benefit of discussion.
9. Discharge of one cautioner to operate as a discharge to all.
10. Date of bills or notes may be proved by parole.
11. Acceptance of bills of exchange must be in writing.
12. All bills drawn within the United Kingdom, &c. on any party within the United Kingdom, &c. to be held inland bills.
13. Notarial protest not to be necessary, except for the purpose of summary diligence.
14. Notice of dishonour in the case of inland bills to be given as in the case of foreign bills.
15. When bill lost, stolen, or fraudulently obtained, holder must prove value given.
16. Holder of bill or note indorsed after period of payment to be subject to objections, &c.
17. Carriers to be liable for losses by accidental fires.
18. Every port in the United Kingdom, &c. to be deemed a home port.
19. Court of session to make regulations for carrying act into effect.
20. Title of act.
21. Act to apply to Scotland only.

The following are the title, preamble, and sections of the act:—

An Act to amend the Laws of Scotland affecting Trade and Commerce. [21st July, 1856].

WHEREAS inconvenience is felt by persons engaged in trade by reason of the laws of Scotland being in some particulars different from those of England and Ireland in matters of common occurrence in the course of such trade, and with a view to remedy such inconvenience it is expedient to amend the law of Scotland as herein-after is mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by

and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. From and after the passing of this act, where goods have been sold, but the same have not been delivered to the purchaser, and have been allowed to remain in the custody of the seller, it shall not be competent for any creditor of such seller, after the date of such sale, to attach such goods as belonging to the seller by any diligence or process of law, including sequestration, to the effect of preventing the purchaser or others in his right from enforcing delivery of the same; and the right of the purchaser to demand delivery of such goods shall from and after the date of such sale be attachable by or transferable to the creditors of the purchaser.

2. Where a purchaser of goods who has not obtained delivery thereof shall after the passing of this act sell the same, the purchaser from him or any other subsequent purchaser shall be entitled to demand that delivery of the said goods shall be made to him and not to the original purchaser; and the seller, on intimation being made to him of such subsequent sale, shall be bound to make such delivery, on payment of the price of such goods, or performance of the obligations or conditions of the contract of sale, and shall not be entitled, in any question with a subsequent purchaser, or others in his right, to retain the said goods for any separate debt or obligation alleged to be due to such seller by the original purchaser: Provided always, that nothing in this act contained shall prejudice or affect the right of retention of the seller for payment of the purchase price of the goods sold, or such portion thereof as may remain unpaid, or for performance of the obligations or conditions of the contract of sale, or any right of retention competent to the seller, except as between him and such subsequent purchaser, or any such right of retention arising from express contract with the original purchaser.

3. Any seller of goods may attach the same while in his own hands or possession, by arrestment or pouding, at any time prior to the date when the sale of such goods to a subsequent purchaser shall have been intimated to such seller, and such arrestment or pouding shall have the same operation and effect in a competition or otherwise as an arrestment or pouding by a third party.

4. Nothing herein-before contained shall prejudice or affect the landlord's right of hypothec and sequestration for rent.

5. Where goods shall, after the passing of this act, be sold, the seller, if at the time of the sale he was without knowledge that the same were defective or of bad quality, shall not be held to have warranted their quality or sufficiency of such goods, or unless the goods have been expressly sold for a specified and particular purpose, in which case the seller shall be considered, without such warranty, to warrant that the same are fit for such purpose.

6. From and after the passing of this act, all guarantees, securities, or cautionary obligations made or granted by any person for any other person, and all representations and assurances as to the character, conduct, credit, ability, trade, or dealings of any person, made or granted to the effect or for the purpose of enabling such person to obtain credit, money, goods, or postponement of payment of debt, or of any other obligation demandable from him, shall be in writing, and shall be subscribed by the person undertaking such

guarantee, security, or cautionary obligation, or making such representations and assurances, or by some person duly authorised by him or them, otherwise the same shall have no effect.

7. No guarantee, security, cautionary obligation, representation, or assurance granted or made after the passing of this act to or for a company or firm consisting of two or more persons, or to or for a single person trading under the name of a firm, shall be binding on the grantor or maker of the same in respect of anything done or omitted to be done, after a change shall have taken place in any one or more of the partners of the company or firm to which the same has been granted or made, or of the company or firm for which the same has been granted or made: unless the intention of the parties that such guarantee, security, cautionary obligation, representation, or assurance, shall continue to be binding, notwithstanding such change, shall appear either by express stipulation, or by necessary implication from the nature of the firm or otherwise.

8. Where any person shall, after the passing of this act, become bound as cautioner for any principal debtor, it shall not be necessary for the creditor to whom such cautionary obligation shall be granted, before calling on the cautioner for payment of the debt to which such cautionary obligation refers, to discuss or do diligence against the principal debtor, as now required by law; but it shall be competent to such creditor to proceed against the principal debtor and the said cautioner, or against either of them, and to use all action or diligence against both or either of them which is competent according to the law of Scotland; provided always, that nothing herein contained shall prevent any cautioner from stipulating in the instrument of caution that the creditor shall be bound before proceeding against him to discuss and do diligence against the principal debtor.

9. From and after the passing of this act, where two or more parties shall become bound as cautioners for any debtor, any discharge granted by the creditor in such debt or obligation to any one of such cautioners without the consent of the other cautioners shall be deemed and be taken to be a discharge granted to all the cautioners; but nothing herein contained shall be deemed to extend to the case of a cautioner consenting to the discharge of a co-cautioner who may have become bankrupt.

10. From and after the passing of this act, where any bill of exchange or promissory note shall be issued without date, it shall be competent to prove by parole evidence the true date at which such bill or note was issued: provided always, that summary diligence shall not be competent on any bill or note issued without a date.

11. No acceptance of any bill of exchange, whether inland or foreign, made after the thirty-first day of December, 1856, shall be sufficient to bind or charge any person unless the same be in writing on such bill, or if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorised by him.

12. Every bill of exchange drawn in any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty, and made payable in or drawn upon any person resident in any part of the said United Kingdom or Islands, shall be deemed to be an inland

bill; but nothing herein contained shall alter or affect the stamp duty, if any, which but for this enactment would be payable in respect of any such bill.

13. From and after the passing of this act, where any inland bill of exchange shall be presented for acceptance or payment, and the same shall be dishonoured by not being accepted or paid, or where any promissory note shall be presented for payment, and dishonoured by not being paid, it shall not be necessary that a notarial protest shall be taken on such bill of exchange or promissory note in order to preserve recourse against the drawer or indorser of such bill or promissory note respectively; but it shall be sufficient to prove such presentment and dishonour, to the effect of preserving recourse as aforesaid by other competent evidence, either written or parole: Provided always, that nothing herein contained shall be taken to affect the necessity for a notarial protest in order to entitle the holder of any bill or note to proceed with summary diligence thereon.

14. Where any inland bill of exchange shall be presented for acceptance or payment, and such acceptance or payment shall be refused, or where any promissory note shall be presented for payment, and payment shall be refused, notice of the dishonour of such bill or promissory note by such refusal to accept or pay shall, in order to entitle the holder to have recourse to any other party, be given in the same manner and within the same time as is required in the case of foreign bills by the law of Scotland.

15. Where any bill or note has been lost, stolen, or fraudulently obtained, the holder of such bill or note suing or doing diligence thereon shall be bound to prove that value was given by him for the same; but such proof may be made by parole evidence.

16. When any bill of exchange or promissory note shall, after the passing of this act, be indorsed after the period when such bill of exchange or promissory note became payable, the indorsee of such bill or note shall be deemed to have taken the same subject to all objections or exceptions to which the said bill or note was subject in the hands of the indorser.

17. From and after the passing of this act, all carriers for hire of goods within Scotland shall be liable to make good to the owner of such goods all losses arising from accidental fire while such goods were in the custody or possession of such carriers.

18. In relation to the rights and remedies of persons having claims for repairs done to or supplies furnished to or for ships, every port within the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty, shall be deemed a home port.

19. The court of session is hereby empowered from time to time, after the passing of this act, to make such regulations by act or acts of sederunt as the said court may deem meet for carrying into effect the purposes of this act: Provided always, that within fourteen days from the commencement of any future session of Parliament there shall be transmitted to both Houses of Parliament copies of all acts of sederunt made and passed under the powers hereby given.

20. In citing this act it shall be sufficient to use the expression "The Mercantile Law Amendment Act, Scotland, 1856."

21. Nothing in this act contained shall apply to any part of the United Kingdom except Scotland.

#### DEEDS (SCOTLAND) ACT.

(19 & 20 Vict. c. 89.)

1. After September 1, 1856, pages of deeds and writings need not be marked by numbers.

The following are the title, preamble, and section of the act.—

An Act to abolish certain unnecessary Forms in the framing of Deeds in Scotland.

[29th July, 1856.]

WHEREAS an Act of the Scottish Parliament was passed in the Sixth Session of the First Parliament of His Majesty King William, intituled Act allowing Securities, &c., to be written Bookways, which Act statutes and ordains that it shall be lawful to write any Contract, Decree, Disposition, Extract Transumpt, or other Security by way of Book, in *Leaves* of Paper, provided that every page be marked by the number, first, second, &c., and signed, and that the end of the last page make mention how many pages are therein contained, in which page only witnesses are to sign in writs and securities, where witnesses are required by law: and whereas the safeguards prescribed by the said act, other than the said provision as to marking every page by number, have been found in practice to be of themselves amply sufficient for the purposes thereof, and the said provision as to marking every page by number has been very generally neglected in practice, and it would therefore be beneficial to and for the Security of the Public that the same should be abolished: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

1. That from and after the first day of September in the year one thousand eight hundred and fifty-six it shall not be competent to institute or to insist in or maintain any challenge or exception to any deed or writing aforesaid, or any deed or writing of any description whatever, on the ground that the pages thereof are not marked by numbers; and it shall no longer be necessary to mark the pages of any deed or writing by numbers, any law or practice to the contrary notwithstanding: Provided always, that nothing herein contained shall be construed to affect any question which may have been in dependence in any Court prior to the passing of this act, or any judgment already pronounced, or any decree which has already gone out, or the provision of the said recited act, or of any other act or acts of Parliament, as to mentioning in the Testing Clause the number of the pages of which the deed consists, or the provision as to signing each page of the deed, or any other provision of the said recited act.

#### MARRIAGE LAW (SCOTLAND) AMENDING ACT.

(19 & 20 Vict. c. 96.)

1. Declaring under what circumstances marriages solemnised in Scotland shall be valid.
2. Certificated copy of entry by sheriff depute that parties were married, and that one of them lived in Scotland twenty-one days preceding such marriage, conclusive as to its validity.

3. No conviction for, nor registration of, irregular marriage, without proof of previous residence.

The following are the title, preamble, and sections of the act:—

An Act for amending the Law of Marriage in Scotland.  
[29th July, 1856.]

WHEREAS it is expedient to amend the law touching marriages in Scotland: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. After the thirty-first day of December one thousand eight hundred and fifty-six, no irregular marriage contracted in Scotland by declaration, acknowledgment, or ceremony shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage; any law, custom, or usage to the contrary notwithstanding.

2. If any persons who shall have contracted an irregular marriage in Scotland after the day and year aforesaid shall within three months thereafter present a joint application for a warrant to register such marriage to the sheriff or sheriff substitute of the county where such marriage was contracted, and shall prove to his satisfaction that they have been married to one another, and that one of them had lived in Scotland for twenty-one days next preceding such marriage, or had his or her usual residence in Scotland at the date thereof, such sheriff or sheriff-substitute shall certify the same under his hand, and shall thereupon grant warrant to the registrar of the parish or burgh in which the marriage was contracted, who shall forthwith enter such marriage in the register of marriages kept by him, in terms of an act of the seventeenth and eighteenth years of her present Majesty, chapter eighty; and any certified copy of such entry, signed by such registrar, and which such registrar is hereby required and empowered to give, charging for the same the sum of five shillings, shall be received in evidence of such marriage, and of such residence or of such previous living twenty-one days in Scotland, in all Courts in the United Kingdom and dominions thereunto belonging.

3. It shall not be lawful, after the date aforesaid, to convict any parties of having irregularly contracted marriage, unless there shall be adduced to the justice or justices of the peace, magistrate or magistrates, before whom the complaint against such parties has been brought, sufficient proof, other than the acknowledgment of such parties, that one of them had at the date thereof his or her usual residence in Scotland, or had lived in Scotland for twenty-one days next preceding such marriage; nor shall it be lawful for any registrar of births, deaths, and marriages in Scotland to register any marriage under the provisions of the said recited act, on the production of an extract of a conviction for having irregularly contracted marriage, unless such conviction shall bear that such sufficient proof as aforesaid was so adduced.

## NOTICES OF NEW BOOKS.

*The Magisterial Formulist: being a complete collection of Forms and Precedents for practical use in all Cases out of Quarter Sessions, and in Parochial Matters, by Magistrates, their Clerks, and Attorneys; with an Introduction, Explanatory Directions, Variations and Notes.* By GEORGE C. OKE, Assistant Clerk to the Lord Mayor of London, Author of "The Magisterial Synopsis," "The Law of Turnpike Roads," &c., &c. 2nd Edition, with considerable additions. London: Butterworths, 1856.

SINCE the publication of the previous edition of this work, numerous alterations in magisterial law have taken place materially affecting the forms of proceeding: and Mr. Oke has embodied them in the present edition, and added many new titles. In various parts the collection has been remodelled and enlarged, and several improvements effected in the arrangement of the forms.

After an able introduction and explanatory observations on the provisions in the statutes as to forms of proceeding—the arrangement of the collection of precedents—and the manner of using the forms, Mr. Oke divides the contents of the volume in the following manner:—

I. *Summary convictions and orders*; comprising—1st, General forms or outlines; 2nd, Special forms of statements of offences; 3rd, Forms applicable to the offences to which the 11 & 12 Vict. c. 43, does not extend; 4th, Criminal Justice Act.

II. *Indictable offences*; comprising—1st, General forms or outlines; 2nd, Statements of indictable offences.

III. *Other proceedings out of sessions*; comprising—1st, Forms for use in special sessions matters; 2nd, Forms for use in matters to be done in petty sessions or by one justice.

At the suggestion of other magistrates' clerks, Mr. Oke has prefixed to the work a list of all the necessary forms required to be printed or purchased for use in a petty sessional division, and we doubt not that the work will continue to receive the patronage of the magistrates, their clerks, and the profession generally.

Mr. Oke's "Magisterial Synopsis," which has passed through four editions, is, we understand, again in the press for a new and revised edition.

## LAW OF COSTS.

OF SUIT BY MORTGAGEE TO ASCERTAIN PRIORITIES ON ESTATE.

Certain estates, on which the incumbrances were very numerous, had been sold under a power of sale, and one of the *prius* incumbrancers instituted a suit against the other mortgagees and some of the purchasers, to secure the surplus fund, and ascertain the

priorities and amounts of the several incumbrances. There were about seventy defendants, and on a reference to chambers, the chief clerk certified the priorities of six, in which the plaintiff was not included, as exceeding the fund in court.

Upon the question of costs, the *Master of the Rolls* said, "I hold the settled rule and practice of this court, and one which I have acted on in a great number of cases, to be, that in a suit for the administration of an estate, all the proper and necessary parties are paid their costs in the first instance, and before the fund is administered. But where the suit is by a mortgagee, or for the benefit of mortgagees, to ascertain priorities upon an estate, or upon a fund which is the produce of the estate (after payment of such costs as may be proper to the plaintiff in the first instance, where all persons obtain the benefit of the suit), the costs of the mortgagees are added to their mortgage securities. I have always considered that to be the decision in *White v. The Bishop of Peterborough*, Jacob, 402, and on reading the judgment, I find nothing in it to contradict that view of the case. It does not appear that any third incumbrance appeared on that occasion. It undoubtedly appears, from a report of a former stage of the case, that there were subsequent incumbrances (3 Swanst. 109); but what part they took does not appear, and all that was asked for in that case was the costs of the plaintiff. *Kenebel v. Scrafton*, 18 Ves. 370, is referred to as an authority for the proposition that the costs of all the incumbrancers are to be first paid. I am of opinion that it is no authority for that purpose."

The question came before Vice-Chancellor Wigram in *Hepworth v. Heslop*, 3 Hare, 485, which was a creditor's suit. The mortgagee came in under the decree, and said he would consent to a sale of the property free from incumbrances. The question was, whether the costs of the sale were to be paid prior to the principal, interest, and costs of the mortgage, and Sir James Wigram determined they were not, but that the mortgagee, who was no party to the suit and had merely consented to the sale free from incumbrances for the benefit of the estate, was entitled, out of the purchase money, to be paid his principal and interest and costs in the first instance. The Vice-Chancellor refers to *Kenebel v. Scrafton*, and says—"If *Kenebel v. Scrafton* be an authority to the contrary it will, as far as my experience goes, be found to have been overruled in practice, for which *Upperton v. Harrison*, 7 Sim. 444, and *Aldridge v. Westbrook*, 5 Beav. 188, are authorities. In *Tipping v. Power*, 1 Hare, 410, I had occasion to consider, but not to decide this point, and I then satisfied myself that the mere circumstance that a mortgagee concurred in a sale would not deprive him of the ordinary right of a mortgagee as to costs. There must be some special circumstances to produce that effect.

"I refer to that case for the purpose of shewing that it is a mistake to suppose that the case of *Kenebel v. Scrafton* establishes such a proposition as that which Mr. Daniell in his book (8 Pract. 1st ed. 18—62) seems to have considered. Certainly that has not been the practice, as far as I am aware, either during my own practice at the bar or since I have had to administer justice from this seat.

With respect to my decision in *Armstrong v. Storer*, 14 Beav. 535, it was distinct from, and is perfectly reconcilable with *Hepworth v. Heslop*. In that case, the mortgagee might, if he had pleased, have enforced the mortgage; but, instead of that, he filed a

bill for the administration of the estate. The consequence, I said, was, that as he had exercised his option, and adopted that course, he must be held to have done so, knowing the usual rules of the court, and that the costs of the administration of an estate must be paid in the first instance, and before he was entitled to be paid his mortgage debt.

"I am of opinion, in this case, that the plaintiff must be allowed his costs of the suit, and that, after that, the costs of all the mortgagees and the incumbrancers must be added to their securities; that is the manner in which this fund must be administered." *Ford v. Earl of Chesterfield*, 21 Beav. 426.

## NOTES ON EQUITY JURISDICTION IMPROVEMENT ACT.

### SALE BY PRIVATE CONTRACT UNDER DECREE—ABSTRACT OF TITLE—CONVEYANCING COUNSEL.

CERTAIN property had been directed by the decree to be sold by public auction, but an offer having been since made for a purchase by private contract the plaintiff, who was mortgagee, applied to the Vice-Chancellor *Stuart* to dispense with laying an abstract of the title before the conveyancing counsel under the 15 & 16 Vic. c. 86, s. 96.

The *Lords Justices* were of opinion that the act of Parliament conferred on the court authority to exercise its discretion in a matter of this description, and directed the application to be mentioned again to the Vice-Chancellor.

*Gibson v. Woollard*, 5 De G. M'N. and G. 835.

### AFFIDAVIT SWORN BEFORE NOTARY PUBLIC.

An affidavit was sworn before Mr. Allen, a notary public at Geneva, in the county of Ontario, in the state of New York, America, and the fact of Mr. Allen being a notary public and that credit ought to be given to his official acts was certified by the British consul at New York under the official seal. There was also an affidavit of the solicitor in the cause, stating that he had applied to General Campbell, the American consul in England, who informed him that notaries public in the United States were authorised by law to administer oaths in any law proceeding.

The Vice-Chancellor *Kindersley* considered that the case was not within the 15 & 16 Vict. c. 86, s. 22, and refused to direct the affidavit to be filed.

The *Lords Justices* said that the affidavit would have been sufficient before the passing of the new act, and that as there appeared to be nothing in the act to exclude it, it ought to be placed on the file.

*Huggitt v. Twiss*, 5 De G. M'N. and G. 910.

## ALTERATION OF COUNTY COURT DISTRICTS.

### HENLEY-ON-THAMES.

It is ordered by her Majesty in Council from and after the 25th day of October, 1856, that the parishes of Henley-on-Thames, Rotherfield Grays, Rotherfield Peppard, Harpsden, Shiplake, Remenham, Fawley, Hambledon, Medmenham, Bix, Pishill, Swincombe, Pirton, Watlington, Nettlebed, Hurley, and Wargrave, now in the district of the county court of Berkshire, holden at Reading, shall cease to be within the district of the said court holden at Reading, and

shall form the district of a county court of Oxfordshire, to be holden at Henley-on-Thames, and a county court for the purposes of the acts in such order recited shall accordingly, from and after such day, be held at Henley-on-Thames aforesaid, by the name of "The County Court of Oxfordshire, holden at Henley-on-Thames," for the said parishes of Henley-on-Thames, Rotherfield Grays, Rotherfield Peppard, Harpsden, Shiplake, Remenham, Fawley, Hambledon, Medmenham, Bix, Fishill, Swincombe, Pirton, Watlington, Nettlebed, Hurley, and Wargrave.

#### AXBRIDGE.

That the parishes of Wedmore, Mark, Chapel Allerton, Weare, Badgworth, Biddisham, East Brent, South Brent, Burnham, Berrow, Banwell, Christon, Loxton, Compton-Bishop, Winscombe, Rowberrow, Shipham, Axbridge, Cheddar, Nyland, Butcombe, Blagdon, Burrington, Churchill, Congresbury, and the Ville of Charterhouse-on-Mendip, now in the district of the county court of Somersetshire, holden at Weston-super-Mare, shall cease to be within the district of the said court holden at Weston-super-Mare, and shall form the district of a county court of Somersetshire, to be holden at Axbridge, and a county court for the purposes of the acts in such order recited shall accordingly, from and after such day, be held at Axbridge aforesaid, by the name of "The County Court of Somersetshire, holden at Axbridge," for the said parishes of Wedmore, Mark, Chapel Allerton, Weare, Badgworth, Biddisham, East Brent, South Brent, Burnham, Berrow, Banwell, Christon, Loxton, Compton-Bishop, Winscombe, Rowberrow, Shipham, Axbridge, Cheddar, Nyland, Butcombe, Blagdon, Burrington, Churchill, Congresbury, and the Ville of Charterhouse-on-Mendip.

#### PONTYPRIDD.

That from and after the 1st day of November, 1856, the county court now holden by the name of "The County Court of Glamorganshire, holden at Newbridge," shall be holden by the name of "The County Court of Glamorganshire, holden at Pontypridd."

#### HAVERFORDWEST.

That from and after the 25th day of October, 1856, the county court of Pembrokeshire, known by the name of "The County Court of Pembrokeshire, holden at Haverfordwest," shall cease to be holden at Fishguard, in the said county of Pembrokeshire.

#### ABERDARE.

That from and after the 31st day of October, 1856, so much of the district of the county court of Glamorganshire, holden at Newbridge, as is included within a line drawn from the point where the western boundary of the plot of ground numbered in the title map of the parish of Llanwnno, 2016, joins the southern boundary of the parish of Aberdare, thence eastward along the said boundary of such parish till it joins the western boundary of the parish of Merthyr Tydfil, thence southward along the said boundary to the southern boundary of the plot of ground numbered in the said map 1407, thence westward along the boundary of the said plot, and thence in a straight line to where the southern boundary of plot 1964 touches the river Cynon, thence along the centre of the said river, and then across the same to the southern boundary of the plot of ground numbered 1708; thence westward along the boundaries of plots

1708, 1702, across the adjoining road to the southern boundary of plot 1701, thence along the southern boundaries of plots 1701, 1698, 1697, thence along the western and northern boundary of the plot 1697 to the western boundary of plot 1936, thence along the said boundary of plot 1936 to the south-western boundary of plot 1991, thence along the south-western boundary of plot 1991 to the southern point of plot 1932, and thence to the south-western boundary of plot 1931, and thence along the western boundary of the same, and thence along the northern boundary of the said plot 1931, until it reaches the western boundary of plot 2016, and thence along the western boundary of the same to the point first described, shall cease to form part of the district of the county court of Glamorganshire, holden at Newbridge, and shall form part of the district of the county court of Glamorganshire holden at Aberdare.

#### NEWBRIDGE.

That from and after the 31st day of October, 1856, so much of the parish of Ystradgynodwg as is now within the district of the county court of Glamorganshire, holden at Merthyr Tydfil, shall cease to be within the district of the said court, and shall form part of the district of the county court of Glamorganshire holden at Newbridge.

#### ALTRINCHAM.

That from and after the 25th day of October, 1856, the county court of Cheshire shall cease to be holden at Knutsford, and the parishes and places now forming the district of the county court of Cheshire holden under the name of "The County Court of Cheshire holden at Knutsford," shall be consolidated with and form part of the district of the county court of Cheshire, holden at Altrincham, and known by the name of "The County Court of Cheshire holden at Altrincham."—From the *London Gazette* of 24th October.

### ANNUAL REGISTRATION OF ATTORNEYS.

The forms of declaration, under the 6 & 7 Vic. cap. 78, may be had on application at the office of the Incorporated Law Society, Chancery-lane.

The members of the profession are requested to be particular in filling them up, either by *themselves*, their *partners*, or their *London agents*, to send them to the office on as *early a day* as possible; and to attend to the following

#### REGULATIONS.

1. No declaration can be acted upon which does not contain all the particulars required by the act of Parliament.

2. Every declaration must be delivered at the office six days before a certificate can be granted.

3. No certificate will be delivered out till Thursday, November 20th.

4. In the first six days, commencing on November 20th, certificates will be delivered only to such *London agents* as shall in due time previously have sent in the declaration of *themselves* and their *country clients*, accompanied by a *list thereof arranged in alphabetical order, and written on foolscap paper bookwise*.

5. These six days to be appropriated among the *London agents* in the following order:—The letters

refer to the initial of the *agent's* surname or that of the senior partner in the case of a firm.

Those commencing with—

A or B .....	Nov. 20
C, D, E, or F .....	" 21
G, H, I, or J .....	" 22
K, L, M, N, O, or P .....	" 24
Q, R, or S .....	" 25
T, U, V, W, X, Y, or Z .....	" 26

6. On every day subsequent to November 26th the certificates will be delivered to the rest of the profession.

7. The fee of 2s. 3d. for issuing each certificate is to be paid on taking the same away.

October, 1856.

## MR. WARREN'S CHARGE TO THE GRAND JURY AT HULL.

### REVIEW OF THE ACTS OF LAST SESSION.

THE learned recorder, Samuel Warren, Esq., Q. C.; made an able charge to the grand jury of Hull at the Michaelmas General Quarter Sessions on Tuesday the 21st October, in which, after some introductory observations on the state of the calendar, he reviewed the principal statutes of the last session.

"Gentlemen (he said) energetic attempts are being made at this moment to reduce the bulk and simplify the structure of our statute law. In this direction I devoutly hope that not more haste than good speed will be seen; otherwise we shall rue the result for many a long day. Something has been actually effected, during the last session, by statute 19th and 20th Vic. c. 64, passed solely to expunge from the statute-book 118 sleeping statutes, that is, within two of the entire number of public statutes passed during the last session.

"The law of *joint-stock companies* it has been endeavoured to consolidate and amend by an act which I hope will be found to stand wear and tear—statute 19th and 20th Vic. c. 47. The *police of counties and boroughs* has been the subject of an act of extensive and important operation, the 19th and 20th Vic. c. 69, the jurisdiction of the *county courts* has been extended, and in some respects remodelled, by the 19th and 20th Vic. c. 108.

"The powers of the church building commissioners have been transferred to the ecclesiastical commissioners; the law of *advowsons* amended, by enabling parishioners and others, forming a numerous class, to sell advowsons held in trust, and applying the proceeds in providing parsonage houses, augmenting small livings, and for other beneficial purposes; and better provisions have been made for the spiritual care of populous parishes, and forming separate parishes, by three acts—chapters 50, 55, 104. The laws of *marriage* in England and Scotland have been amended by the acts 19th & 20th Vic. cc. 96 & 119; the administration of *intestates' estates* has been rendered uniform by statute 19 & 20 Vic. c. 94.

"The good government and extension of the University of Cambridge sought by statute 19th and 20th Vic. c. 88; the coast-guard service and the manning of the navy stand on a more secure footing by statute 19th and 20th Vic. c. 83; the customs laws are amended by chapter 75; a vice-president of the committee of council on *education* is appointed by chapter 116; the electoral law of Scotland elaborately amended by chapter 58, and several other highly-important and valuable statutes have

been passed with reference to Scotland and Ireland the factories acts have been amended by chapter 38, and those relating to the duty on fire insurance by chapter 22; that relating to pawnbrokers, by chapter 27.

"By chapter 113, valuable facilities are afforded for taking evidence in relation to civil and commercial matters, pending before foreign tribunals, the act coming into operation as soon as the judges have framed rules and orders for carrying it into effect: while chapter 54, as I pointed out last session, effects a great improvement in the method of discharging your office as grand jurymen, at once imposing on you a responsible duty, and relieving us from needless interruption in the discharge of ours.

"By statutes 19th and 20th Vic. c. 120, an admirable alteration has been effected in the law relating to *settled estates*—one equally bold and beneficial; giving the courts of equity ample power to deal with a difficulty which has hitherto required the circuitous, clumsy, and costly interference of the legislature in private family settlements. The statute comes into operation on the 1st of November—and I confidently anticipate that it will effect great good, by relaxing the stringency of settlements of property made with the best intentions and on the best advice, but which subsequent events, impossible to have been foreseen, have rendered worse than useless, mischievous and oppressive to those intended to have been benefited by them. It appears to me impossible to overstate the benefits conferred by this act, if it be carried out by the courts of equity carefully and discreetly.

"Let me now glance at three short statutes effecting salutary and extensive changes in that department of the law more directly concerning such a community as Hull. First of all, I warmly congratulate the sailors, and all interested in the welfare of them and their families, on the passing of statute 19th and 20th Vic. c. 41, which affords great inducements to economy, and facilities for securing to sailors their hard earnings, by establishing a central savings bank for seamen in London, and branch banks at all our principal sea ports, at any of which sailors may instantly deposit their wages with complete safety, withdraw the whole or any portion at any port they please, receive interest on their deposits, and in the event of death, both principal and interest will be handed over at once to their families. The wives, widows, and children of seamen are also liberally allowed to open accounts on the same terms; and sailors may deposit money for their children, which those children, if above 14 years old, may draw out as, and when, they require it. Is not this better than expending the money hardly earned in a voyage round the globe, in a first day or night's profligacy ashore? Is there a session here at which we have not the sad duty of dealing with such cases, and seeing the poor foolish sailor driven back, ashamed of himself, and a beggar, again to the wide ocean, leaving often his wife and family beggared and heart-broken? Let him now, however, only make the Board of Trade his bankers, instead of scattering his earnings among crimps and thieves, and in brothels, and beer and gin shops, and he may take ship again, light-hearted, and with a smile reflecting God's approval, while he dashes a tear from his eyes at parting with a happy and affectionate family. The legislature has done its duty, and let our gallant seaman do his, and let you and me, gentlemen, be spared the pain of seeing him stand either here, or there—

beside me here, or before me there—in the witness box, or at the bar—as prosecutor or as prisoner, publicly telling, when sobered and ashamed, the wretched story of his folly and guilt!”

“Gentlemen, by another act (chapter 26), a *banker's cheque*, bearing across its face, in written or stamped letters, the name of a banker; or the words “and company,” either in full, or abbreviated, is now payable only to or through some banker; which the statute I think truly recites will conduce to the ease of commerce, the security of property, and the prevention of crime.

“Another act is chapter 97; and I recommend the careful study of it, not only to the professional lawyers of Hull, but to all engaged in trade and commerce, for it effects great changes in *mercantile law*. First of all, it makes it no longer necessary that a written *guarantee* should state the consideration on which it was given, and which may now be proved by word of mouth. Again, a guarantee given to, or for, a firm, ceases to be binding after a change in any one or more of its members, unless the contrary be the expressed or necessarily implied intentions of the parties; and every surety paying his principal's debt is entitled to the immediate and fullest advantages of all securities then held by the creditor; in whose place the surety is thenceforth to stand. Again—a written acceptance on the bill is now necessary in all *bills of exchange*, whether inland or foreign; and bills and notes drawn in any part of the United Kingdom, or the channel islands and islands adjacent, within the Queen's dominions, and payable there, are henceforth to be deemed inland bills, but without affecting the stamp duties. And as to the rights and remedies of those who have done repairs to *ships*, or furnished supplies for them, every port in the United Kingdom, the channel islands, or other adjacent islands within the Queen's dominions, is to be deemed a home port. Important improvements, also, are effected in the Statutes of *Limitations*, and others relating to the law of debtor and creditor, principal and agent, and co-contractors, and co-debtors, whether liable jointly only, or jointly and severally.

“Another valuable section protects persons *bond fide*, and for a valuable consideration, acquiring a title to goods, against writs of execution against the seller, provided the buyer had no notice that any writ was in the hands of the sheriff, unexecuted. Finally, singularly stringent provisions are made by this act to enforce the specific delivery of goods contracted to have been delivered, for a price in money. A jury will henceforth have to say (under the direction of a judge) what are the goods remaining undelivered, and what the plaintiff would have had to pay if they had been delivered according to contract; as well as what damages he would have been entitled to receive, if the goods should, or should not, be afterwards delivered, in conformity with the act; which provides that the judge may order execution to issue for the goods, on payment of the sum due, without giving the defendant the option of retaining them, as payment of the damages; and, if the goods cannot be found, then all the lands and chattels of the defendant within the jurisdiction of the sheriff are to be distrained till the delivery of the goods; or, if the plaintiff prefer it, the sheriff must realise the assessed value, or damages, out of the defendant's goods.

“Gentlemen, even as far as I have gone, and assuring you that I have necessarily omitted from my view perhaps 80 or 90 out of 120 acts of the

last session—I think we shall be entitled to say, looking solely at the record of the statute-book, to which I strictly confine myself here—that parliament has not been idle during the last session; and, speaking solely as an administrator of the law, I deprecate excessive, far more anxiously than deficient, legislative action, in matters of such magnitude as those which I have just been laying before you. Inconsiderate legislation serves only to plunder the public and enrich lawyers, whether they will or not!”

The honourable and learned member then enlarged with much eloquence on the code of *reformatory* procedure, and the means adopted for the moral and social improvement of the people, and especially the education and correction of juvenile offenders.

## OPINIONS OF THE PRESS ON LEGAL EXAMINATIONS.

### THE BAR AND THE ATTORNEYS.

SUBJECTS of discussion seem to recur with the seasons. Until changes are effected—until reforms are accomplished—it is the duty of the journalist to keep them before the eyes of the public, to repeat again and again the arguments in favour of the proposed improvement, with fresh illustrations if possible, and to answer such objections as seem to carry most weight with them. If the fashion of the world prevents us from levelling abuses with one single blow, let us imitate the slower, but not less certain, process of the dropping water, whose pertinacious touch hollows even the “everlasting flint.”

We are again on the eve of term; the lawyers are hurrying back from their sea-side reveries, their Paris gaieties, or sporting idleness. The Temple begins to assume its look of monotonous activity, and parchment-faced creatures, armed with dull-looking papers, begin to people its deserted walks. The judges are, no doubt, beginning to rub their eyes as they awaken out of their vacation slumbers. And youths about the age of discretion are busy searching for lodgings, where in the foggy November evenings their anxious parents at home picture them cutting up the leaves of their new *Blackstone*, or mastering the enigmas of *Fearn's* Contingent Remainders. In a few days, in short, the courts will be sitting, the barristers' chambers will be open, and the legal professors will have resumed their functions.

Nor should we forget that this also is the season at which the board of examiners for the admission of *attorneys* and *solicitors* holds its sittings; and, if we are rightly informed, the approaching examination presents features of peculiar interest, for we understand that some sort of *certificates of merit* are to be awarded, so that the able and diligent student may entitle himself, not only to a certificate of competency, but to a certificate of having passed with distinction. In other words, the Law Institution seems to have taken the first step towards the introduction of a class list into their examination. This, surely, is in the right direction, and we have no doubt that it will stimulate young students to renewed activity.

We wish we could discern any signs of a similar sort in the benches of the inns of court. As yet there is no examination imperatively required of any candidate for the degree of a barrister. Lectures are established, prizes are offered, certificates of merit are granted; but it is quite possible, and indeed it is the usual practice, to call men to the bar



without applying any test for the purpose of ascertaining whether they know the meaning even of the term "fee-simple." It is certainly extremely difficult to understand this practice. Of old it certainly was not so; indeed, the very forms still followed at Lincoln's-inn show that examination was a reality. Nor is the English plan of eating yourself into a lawyer sanctioned by the practice of any nation on the face of the earth—nay, even in this anomalous country of ours, there is nothing whatever analogous to such an absurdity in any of the other learned professions. England and Ireland enjoy the distinction of possessing amongst the body of lawyers a certain class who have imbibed their title of lawyer through their bellies. Now there are two favourite arguments in defence of this state of things which are by some deemed unanswerable.

In the first place, it is said to be of immense importance that there should be the sons of country gentlemen among the law students. They give such a gentleman-like tone to the profession. They come sometimes to the chambers of their tutor in the Temple; and although they prefer discussing the merits of the newest actress to the newest case in the Queen's Bench, still they throw an air of refinement over the musty monotony and vulgar narrowness of the tutor's chambers. Then they go down to the country. They meet, perhaps, at quarter sessions dinners the very men whom they saw in chambers, and who are now the leaders of the sessions bar. They have some recollections in common with them. Though these quondam students—now become justices of the peace—don't know any law, still they have imbibed something of the legal mode of looking at a question; and at all events they are disposed to regard with something like toleration the man who earns his bread by every-day work. Now all this is surely a tissue of garrulous imbecility. It is the argument, not of country gentlemen, but of the benchers of the inns of court. Their secret ground for facilitating admissions to the bar is shrewdly suspected to be, not any philosophic desire to encourage idle young squires to become legal pupils, but the somewhat less lofty desire to increase their funds by the fees demanded of those on their books. So far are the majority of country gentlemen from adopting the puerile fallacy propounded by the sordid sages, that we have reason to know they warmly repudiate any such notions.

The object that any sensible man has in sending his son up to London to a barrister's chambers is, that he may read law in a serious way. His own experience has taught the father the advantages of a knowledge of the principles of law, whether he continues to reside at his place, or aspires to a seat in Parliament. He knows well enough the danger which surrounds any young man just released from college amidst the thousand temptations of this modern Babylon. Therefore, so far from desiring to see every restraint removed—every incitement to intellectual exertion cut off—it is his wish rather to see some at least of those tests retained, by which he may know whether his son devotes any considerable portion of his time to reading and reflection. It may, indeed, be said, that any father may insist upon his son presenting himself at the examination; but experience shows, that unless an examination is made imperative, to insist upon this is very difficult, if not practically impossible.

But there is another view of this subject. It is sometimes urged by those who advocate a compulsory examination that the public have a right

to know whether those persons who style themselves barristers are instructed in their professions. In the case of attorneys or physicians this is deemed reasonable. Why does not the same principle apply to barristers? To this the approved answer is that the barrister stands upon a special ground. The attorney advises his client in his own room, he manages his affairs, he deals with his property in private; and, until the poor client is ruined by negligence, ignorance, or deliberate fraud, nothing is heard of the attorney. The relation in which the attorney stands to his client is so close, so confidential, that a client ought to have some method of ascertaining whether the attorney is fit to transact his business. So it is with the surgeon and physician. The damage which they may do, the injury which a man may suffer at their hands, is so terrible, that it is clear they ought to be furnished with a certificate of knowledge. The unfortunate person who meets with an accident, or falls ill, has no time to inquire into whether an uncertificated person has the requisite knowledge of medicine. However, the public have sanctioned compulsory examinations in the case of medical men and attorneys, and therefore such examinations are properly insisted on. But the case of a barrister is very different. He must appear in open court. He must display his knowledge before a judge—generally an eminent lawyer—who will at once detect the ignorance of counsel. Hence we are told it is impossible to suppose that ignorant barristers can long deceive the public, because they will at once be openly exposed.

This, however, is a simple mis-statement. If indeed, it were true that all business transacted by barristers was conducted in open court, there might be something in the argument. But the fact is that a very small proportion of a barrister's business is conducted thus openly. Two branches of the profession—the special pleaders and the conveyancers—never go into court at all; and sometimes the junior counsel, who is responsible for the conduct of the prior steps of the case, is not heard in court. What proportion, let us ask, does the number of cases in court bear to the number of cases for opinion, of conveyances of large property, or the thousand matters which are done in a barrister's chambers? and yet, upon such matters as these—transacted in private—men's rights are determined, resolutions to take or to refrain from legal proceedings are adopted, enormous possessions are transferred, and vast sums are paid. That such matters as these should be conducted with knowledge, promptitude, and economy, is quite as essential as that those gentlemen who argue cases in court should do so with learning. And yet it is notorious that the class of lawyers who transact the one sort of business is quite distinct from those who transact the other sort. If the vigilance of the Bench is required to ensure knowledge on the part of those who figure in court, what means are there to ensure knowledge on the part of those who transact business in chambers? For these at least the test of an examination is imperatively needed.—From the *Daily News*, October 23rd.

#### SELECTIONS FROM CORRESPONDENCE

##### UNDUE CHARGES OF CEMETERY COMPANIES.

Nearly a quarter of a century ago an act of the Legislature was passed for establishing a cemetery

ned ground that it would

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difficulty) on which the current year of the tenancy would expire.

I am not aware that there is any difference between nursery ground, in which immense numbers of trees are planted, and grass land, as regards notice to quit, although the tenant considers that he is entitled to two or three years' notice to quit the nursery premises, according to the custom of the trade. C.

#### COPYHOLD NOTICE TO QUIT.

C., who holds of D. a house from Lady-day, as a yearly tenant, received, on the morning of 29th September, a notice to quit at Lady-day.

C. contends that he is entitled to half a year's notice to quit, irrespective of the usual quarter days that is to fall, half of 365 days being 183; and inasmuch as there are only 177 days from Michaelmas-day to Lady-day, he considers the notice insufficient. Is the notice valid or not? Crvis.

#### LIST OF LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

19 & 20 Vict.

als have purchased ground in the the purpose of constructing a family a cost of some £1,000 an acre, and numerous have been built accordingly, at an expense £100, or perhaps £150. The charge for ground is 8s. per square foot!

They are, however, astounded at a demand being made by the company of £5 5s. on the interment of every adult in their own property, considering it an unreasonable, if not an extortionate, demand—a payment they never contemplated on their purchase of the ground.

Surely Parliament never contemplated allowing companies to charge *ad libitum*, and they must have meant that the charge should, in all cases, be reasonable, which that in question is clearly not.

At all events, the stringent powers conferred shew the necessity of the appointment of an efficient individual to control and correct these enormities.

Are the companies justified in charging a sum of £5 5s. for the interment of every adult, or would a court of law limit the charge to a reasonable sum?

AMICUS.

#### VALIDITY OF NOTICE TO QUIT.

A., a nurseryman and market gardener, holds his nursery and garden ground of B., at a certain annual rent, which he pays half-yearly. There is no agreement in writing. The tenancy commenced many years ago at Michaelmas.

At 10 a.m. on Michaelmas-day last, A. received the subjoined notice from B. :—

"I hereby give you notice, and require you to quit and deliver up to me the possession of the land, buildings, and hereditaments you hold of me as tenant, situate in the parish of , in the county of , at the expiration of the year of your tenancy, which shall expire at or next after the end of one half-year from the date hereof. Dated this 29th September, 1856. "B."

Is this a good notice to quit at Michaelmas, 1857, or at what other time?

I have some recollection of a case at the Sussex Assizes, above twenty years ago, wherein the judge, discarding these general notices, held that a specific day, corresponding with the holding, must be stated in the notice to quit. In that case, if I mistake not, the fact was, that a notice had been given to quit in general terms on the day (without naming it spe-

1. An Act to enable the London Dock Company to raise a further Sum of Money.
2. An Act for supplying with Gas the townships of Knottingley and Ferrybridge in the West Riding of the County of York.
3. An Act to extend the Period limited for the Exercise of the Powers of the Colonial Bank; and for other Purposes.
4. An Act for lighting with Gas the Borough of Weymouth and Melcombe Regis, and its Neighbourhood, in the County of Dorset; and for other Purposes.
5. An Act for vesting in the Mayor, Aldermen, and Burgesses of the Borough of Liverpool the Undertaking of the Chorley Waterworks Company, and for other Purposes.
6. An Act for incorporating the Lancaster Gaslight Company, and extending their Powers, and for authorising additional Works, and the raising of further Moneys; and for other Purposes.
7. An Act to enable the Haslingden and Rawtenstall Waterworks Company to raise a further Sum of Money, and for other Purposes.
8. An Act to enable the Southport Waterworks Company to raise a further Sum of Money, and for other Purposes.
9. An Act for the better supplying with Gas the Parish of Gainsborough in Lincolnshire.
10. An Act for enabling the Company of Proprietors of Lambeth Waterworks to raise further Money, and for other Purposes.
11. An Act for effecting certain Alterations in the Works of the Tidal Harbour of Victoria Dock at Dundee, and for other Purposes in relation to the Harbour of Dundee.
12. An Act to enable the Lincoln Waterworks Company to raise a further Sum of Money.
13. An Act for granting further Powers to the Heywood Gaslight and Coke Company.
14. An Act for the incorporating of the Milford Railway Company, and for the making of the Milford Railway in the County of Pembroke.
15. An Act to enable the Eastern Counties and

- London and Blackwall Railway Companies to raise a further Sum of Money for the Purposes of the London, Tilbury, and Southend Extension Railway; to amend the Acts relating to such Undertaking; and for other Purposes.
16. An Act for making a Railway from the Wilts, Somerset, and Weymouth Railway, near Frome, to Shepton Mallett in the County of Somerset.
  17. An Act to confirm an Award for the Settlement of Matters in difference between the University and Borough of Cambridge, and for other Purposes connected therewith.
  18. An Act to enable the Ulster Railway Company to subscribe towards the Undertaking of the Portadown and Dungannon Railway Company, and to authorise certain Arrangements between the said Companies, and for other Purposes.
  19. An Act for supplying with Water the Town of Filey and the Environs and Neighbourhood thereof, and other Places in the East and North Ridings of the County of York, and for authorising the Purchase of the Filey Gasworks, and for supplying the said Town with Gas; and for other Purposes.
  20. An Act to empower the Wakefield Gaslight Company to raise a further Sum of Money.
  21. An Act for incorporating the Worksop Gas Company.
  22. An Act to amend and extend the Provisions of "The Llanidloes and Newtown Railway Act, 1853," and to enable the Llanidloes and Newtown Railway Company to make certain Deviations in their authorised Line and Levels, and for other Purposes.
  23. An Act to confer further Powers on the Boston Gaslight and Coke Company.
  24. An Act to enable the East of Fife Railway Company to make a Deviation in the Line of their Railway, and for other Purposes.
  25. An Act for continuing the Term and amending and extending the Provisions of the Act relating to the Leicester and Welford Turnpike Road, in the Counties of Leicester and Northampton.
  26. An Act for more effectually paving, cleansing, lighting, and otherwise improving the Town of Gravesend in the County of Kent.
  27. An Act to enable the Scarborough Waterworks Company to raise a further Sum of Money, and to extend the Limits for the Supply of Water, and to amend the Provisions of the Act relating to such Company.
  28. An Act to repeal the Acts relating to the Sleaford and Tattershall Turnpike Road, and to make other Provisions in lieu thereof.
  29. An Act to confer further Powers on the Bath Gaslight and Coke Company.
  30. An Act to confer further Powers on the Cheltenham Gaslight and Coke Company.
  31. An Act for continuing the Term and amending the Provisions of the Act for making and maintaining a Turnpike Road from the Town of Crowland in the County of Lincoln to the Town of Eye in the County of Northampton.
  32. An Act to extend the Municipal Boundaries of the City of Edinburgh, to transfer the Powers of the Commissioners of Police to the Magistrates and Council, and for other Purposes relating to the Municipality of the said City.
  33. An Act to authorise the Cork and Youghal Railway Company to extend their Railway into Cork, and for other Purposes.
  34. An Act for altering the Name of the Banbridge, Newry, Dublin, and Belfast Junction Railway Company to the Name "The Banbridge Junction Railway Company," for increasing their Capital and extending their Powers, and for other Purposes.
  35. An Act for enlarging and improving the Justiciary Court House, and Court Houses and Public Buildings of the City of Glasgow and County of Lanark, for erecting additional Buildings, for amending the Act relating thereto, and for other Purposes.
  36. An Act for making better Provision for supplying the Districts of Dewsbury, Batley, and Heckmondwike with Water, and for confirming an Agreement between the Local Boards of Health of those Districts; and for other Purposes.
  37. An Act for the Continuance and Regulation of the Kettering and Newport Pagnell Turnpike Road Trust.
  38. An Act to amend the Provisions and extend the Limits of the Act relating to the City of Coventry Gaslight Company.
  39. An Act to authorise the making of a Turnpike Road from the Township of Thornaby to Middlesbrough in the North Riding of the County of York, with a Bridge over a Creek or Arm of the River Tees, and for other Purposes.
  40. An Act to authorise the making of a Railway from the Great North of Scotland Railway to Alford in the County of Aberdeen, to be called "The Alford Valley Railway."
  41. An Act to amend "The Saint Ives and West Cornwall Junction Railway Act, 1853."
  42. An Act to make further Provision for supplying with Water the Borough of Shrewsbury in the County of Salop.
  43. An Act to amend an Act passed in the 7th and 8th Years of the Reign of His late Majesty King George the Fourth, intitled an Act to alter, amend, and enlarge the Powers and Provisions of an Act relating to the Road from Barnsdale through Pontefract to Thwaite Gate near Leeds in the West Riding of the County of York, and to continue the Term thereby granted.
  44. An Act for regulating the Capital of the Fleetwood, Preston, and West Riding Junction Railway Company, for making further Provision with respect to Tolls to be taken on the Railway, and for other Purposes.
  45. An Act for making a Railway from the Chester and Holyhead Railway at or near to Rhyl in the County of Flint to the Town of Denbigh in the County of Denbigh, to be called "The Vale of Clwyd Railway."
  46. An Act to discontinue the taking of Toll on the Turnpike Roads leading from the Town of Antrim towards Coleraine, and to provide for the future Maintenance of such Roads.
  47. An Act to amend and consolidate the Acts relating to the Shrewsbury and Hereford Railway Company, to enable that Company to raise further Sums of Money, to acquire additional Lands; and for other Purposes.
  48. An Act to enable the Mayor, Aldermen, and Burgesses of the Borough of Cork to remove certain Bridges, and to build new Bridges in lieu thereof; to confirm certain Arrangements with the Cork Pipe Water Trustees; to provide the necessary Funds for affording an improved Supply of Water at Cork; to alter, amend, and enlarge certain Powers and Provisions of the

- Cork Improvement Act, 1852; and for other Purposes.
49. An Act to amend and extend the Provisions of the several Acts relating to the Knaresborough and Green Hammerton Turnpike Road in the County of York, and to create a further Term therein; and for other Purposes.
  50. An Act to amend and extend the Provisions of the Act relating to the Knaresborough and Pateley Bridge Turnpike Road, and to create a further Term therein, and for other Purposes.
  51. An Act for regulating the Capital and Mortgage Debt of the Eastern Counties Railway Company; and for other Purposes.
  52. An Act for extending the Time for the Completion of the Works authorised by "The Hampstead Junction Railway Act, 1858."
  53. An Act for making a Railway from Lowestoft to join the East Suffolk Railway in the Parish of Beccles, all in the County of Suffolk, and for other Purposes connected therewith.
  54. An Act to enable the Midland Railway Company to raise additional Capital, and for other Purposes.
  55. An Act for more effectually repairing the Road from Barnby Moor in the County of Nottingham to Maltby in the County of York, and from Whiston to Rotherham in the said County of York.
  56. An Act for better paving the City of Glasgow, and for other Purposes in relation to the Statute Labour of the said City.
  57. An Act for the Transfer of the Wolverhampton Waterworks to the Wolverhampton New Waterworks Company, and for other Purposes.
  58. An Act for repairing the Road from Blackburn in the County Palatine of Lancaster to Addingham and Cocking End in the West Riding of the County of York, and the Road from Old Accrington to its Junction with such Road in Habergham Eaves in the said County of Lancaster.
  59. An Act to incorporate "The West Ham Gas Company," to enable them to raise further Money, to confirm a Contract between the said Company and the Commercial Gas Company; and for other Purposes.
  60. An Act to continue the Honiton and Sidmouth Turnpike Trust, and for other Purposes.
  61. An Act for making a Railway from the Chappel Station of the Colchester, Stour Valley, Sudbury, and Halstead Railway to Halstead in the County of Essex, and for other Purposes.
  62. An Act to incorporate "The Wandsworth and Putney Gaslight and Coke Company," and for other Purposes.
  63. An Act to authorise the North British Railway Company to raise more Money, and to build a Bridge over Leith Wynd in Edinburgh, and for other Purposes.
  64. An Act for more effectually repairing the Road from Penrith to Cockermouth, and other Roads connected therewith, and for making and maintaining several new Roads, all in the County of Cumberland.
  65. An Act to consolidate the Drainage Trusts in Deeping Fen in the County of Lincoln, and for other Purposes relating to the said Fen.
  66. An Act for more effectually repairing certain Roads in the County of Chester, of which the Short Title is "Stockport and Warrington Road Act, 1856."
  67. An Act for enlarging and improving the Elgin and Lossiemouth Harbour, for raising a further Sum of Money, and for other Purposes.
  68. An Act to enable the Carmarthen and Cardigan Railway Company to make a Deviation of a Portion of their Line of Railway, and to abandon Parts thereof, and to grant further Powers to the Company; and for other Purposes.
  69. An Act to enable the Luton, Dunstable, and Welwyn Junction Railway Company to alter the present authorised Junction of their Railway with the Leighton Buzzard and Dunstable Branch of the London and North-western Railway; and for other Purposes.
  70. An Act for incorporating the Scottish Drainage and Improvement Company, and to afford greater Facilities for the Improvement of Land in Scotland.
  71. An Act for making a Railway from Lymington in the County of Southampton to the London and South-western Railway at Brockenhurst in the same County, to be called the "Lymington Railway," with a Landing Place at Lymington aforesaid, and for other Purposes.
  72. An Act to repeal the Acts relating to the Brough and Eamont Bridge Turnpike Road, and to make other Provisions in lieu thereof.
  73. An Act to renew the Term, and continue, amend, and enlarge the Powers, of an Act passed in the Third Year of the Reign of His Majesty King George the Fourth, intituled An Act for repairing and amending the Roads from Donington High Bridge to Hale Drove, and to the Eighth Milestone in the Parish of Wigtoft, and to Langret Ferry in the County of Lincoln.
  74. An Act for supplying with Water the Inhabitants of Clay Cross, and the neighbourhood, in the County of Derby.
  75. An Act for making a Railway from Sittingbourne to Sheerness, all in the County of Kent; and for other Purposes.
  76. An Act to enable the Eastern Counties and London and Blackwall Railway Companies to extend the London, Tilbury, and Southend Extension Railway to the London and Blackwall Railway, with Branches therefrom, and to authorise certain Arrangements with reference thereto; and for other Purposes.
  77. An Act to authorise the Division of the borough of Middlesbrough into Wards; to enable the Local Board of Health of the District of Middlesbrough to purchase Gasworks and light the District, and to enlarge the Market Place; to enable the Corporation to establish a public Wharf, and a Passage over the River Tees; to confer other Powers on the Local Board and the Corporation; and for other Purposes.
  78. An Act for the better Supply of the Town of Torquay and the Neighbourhood thereof with Water, and for other Purposes.
  79. An Act for making a Railway from Yarmouth to the East Suffolk Railway in the Parish of Haddiscoe, with a Branch Railway connected therewith, and for other Purposes.
  80. An Act to sanction a Supply of Water to the Town and Neighbourhood of Leeds from the River Wharfe.
  81. An Act to attach further Advantages to certain Portions of the Capital of the Eastern Union Railway Company.
  82. An Act to repeal An Act for amending and maintaining the Turnpike Road from Bawtry,

through the Town of Tinsley, to the Road from Rotherham to Sheffield, in the West Riding of the County of York, and to make other Provisions in lieu thereof.

83. An Act for continuing the Term and amending and extending the Provisions of the Act relating to the Godley Lane Turnpike Road in the West Riding of the County of York.
84. An Act to repeal the Act relating to the Turnpike Roads from Halifax to Huddersfield in the West Riding of the County of York, and to grant a further Term in the said Roads, and further Powers for the Management thereof, and other purposes.

(To be continued.)

## NOTES OF THE WEEK.

### LECTURE ON TRUTH.

It is highly gratifying to notice the exertions made by eminent men for the improvement of the humbler classes of society. The judges and other eminent lawyers are ready to join in these laudable undertakings for the general good. They often preside at meetings for these objects: witness their eloquent advocacy at the annual meetings of the United Law Clerks' Society. We are glad to announce that Vice-Chancellor Sir W. Page Wood has consented to deliver a lecture at Exeter Hall on Tuesday, 11th November, being the first of a series given in aid of the Young Men's Christian Association. The subject of the Vice-Chancellor's lecture is "Truth and its Counterfeits."

### FIRST DAY OF TERM.

The Lord Chancellor will receive the judges, Queen's counsel, &c., on Monday, the first day of Michaelmas Term, at his lordship's residence, Upper Brook-street, at twelve o'clock.

### DEATH OF MR. CLARKSON.

We regret to record the death of Mr. Clarkson, the eminent criminal law barrister, and the recorder of Faversham, on Friday, the 24th October, at Brighton. He was called to the bar by the Hon. Society of Lincoln's Inn on the 7th February, 1828.

### REGISTERED LETTERS.

Much confusion has been created by letters marked "registered" being deposited in the letter boxes instead of being given in at the windows of the Post-office, and proper receipts obtained. In order to discourage this practice, on and after the 1st of Nov. next, all such letters will be liable to a registration fee of one shilling, in addition to the proper amount

of postage. The amount of this fee, or such portion of it as may not have been prepaid, will be charged to the person to whom the letters are addressed. We understand that if the regulations be observed in delivering registered letters at the Post-office, and obtaining a receipt, the usual charge of sixpence only will be made. This regulation is just and reasonable. Those who abuse the convenient plan of registered letters ought to be fined.

### LAW APPOINTMENTS.

Mr. P. Carnegie, deputy collector and deputy magistrate at Allahabad, has been appointed an assistant commissioner of the second class in the province of Oudh, East Indies.

Mr. R. G. Mcvill has been appointed an assistant commissioner of the second class in the Punjab, East Indies.—*Civil Service Gazette*.

Mr. Edward Herbert Bunsbury has been appointed secretary to the Cambridge University Commission.

The Queen has been pleased to appoint John Dawson, Esq., Chief Justice of the Islands of St. Christopher, to be Chief Justice of the Island of Nevis.

Her Majesty has also been pleased to appoint Charles Douglas Steward, Esq., Attorney-General of the Island of St. Vincent, to be a member of the Executive Council of that Island.—From the *London Gazette*, 24th October.

Mr. Mark Perrin, son of Judge Perrin, has been appointed Secretary to the Lord Chancellor in Ireland, in the room of Mr. Maziere Brady, who has been appointed Clerk of Affidavits, in succession to Mr. Hogan, who retires on two thirds of his salary. The emoluments of Mr. Brady's new office amount to £600 per annum, and the situation is one for life.—*Times*.

The new Judge of Appeal, the Right Honourable Francis Blackburne, ex-Chancellor of Ireland, has been appointed Lord Justice of the New Court of Appeal, Ireland, under the act of last session.

Mr. Charles Kingdon, solicitor, has been appointed Registrar of the Holsworth County Court, in the room of Mr. John Darke, deceased.

Mr. George Graham White, solicitor, has been appointed Registrar of the Lancaster County Court, in the room of Mr. John Darke, deceased.

Mr. Alfred Clark, solicitor, has been appointed Clerk to the Governors of Moulton (near Spalding) Endowed Schools.

Mr. Charles William Moore, solicitor, has been appointed coroner of Tewkesbury, in the room of Joshua Thomas.

### LEGAL EXAMINATION DISTINCTIONS.

We understand that no alteration will be made in the regulation, limiting the intended prizes to candidates under the age of twenty-six.

## ANALYTICAL DIGEST OF CASES.

### SELECTED AND CLASSIFIED.

### House of Lords' Appeals.

#### ANSWER.

See *Evidence; Lunatic; Revisor*.

#### APPEAL.

See *Husband and wife*.

### BANKING COMPANY.

*Transfer of shares—Sci. fa.—Creditor—Injunction—Authority of directors.*—A banking company was established under the 7 Geo. 4, c. 46. By the deed of settlement of the company it was declared that no transfer of shares should be permitted, except upon

notice to the directors, and on the consent thereto of a board of directors, such consent to be signified by a certificate in writing signed by three directors at the least. If such consent was refused the shareholder might require the directors to buy his shares at the market price of the day. After a consent given the name of the transferee was entered in the share register book, and the entry there was conclusive against him. No shareholder could compel an inspection of the books of the company. S. was a shareholder; he desired to transfer his shares to different individuals, and he sent the proper notices to the directors; he received back consents signed by three directors, on which he completed the transfers; the transferees' names were entered in the share register book; and the returns made to the Stamp Office under the 7 Geo. 4, c. 46, omitted the name of S. from the list of shareholders, and inserted it in the list of those who had ceased to be shareholders. The transferees afterwards received the regular notices of meetings, &c. The directors subsequently sought to impeach these transfers on the ground that the notices had never been submitted to a "board of directors," nor the consents given by such "board," but that the consents had merely been examined by the managing director alone then signed by him and afterwards signed by two other directors. It appeared that this mode of transacting the business of the company had existed ever since the formation of the company.

*Held*, affirming a judgment of the *Master of the Rolls*, that such being the case the directors could not in this instance set up their own want of observance of the formalities required by the deed as a ground on which to fix S. with liability as a continuing shareholder; their course of dealing bound them, and he was released.

A creditor of the company had sued the company and obtained judgment, and then at the desire of the directors, had issued a *sci. fa.* against S.; S. obtained an injunction to prevent the creditor from enforcing the judgment as against S.

Per *Lord St. Leonards*, where a company has, under the act 7 Geo. 4, c. 46, made use of a creditor to proceed against a person, as a shareholder, when that person ought not properly to be placed in that position, he is entitled to relief.

If directors of a company do acts in a matter in which they have no authority, these acts are null and void; but if they neglect the acts which are within their authority, and which they ought to perform, neither a court of law nor of equity will allow them afterwards to take advantage of their own neglect.—*Bargate v. Shortridge*, 5 H. of L. 297.

#### BILL OF EXORPTIONS.

See *Vesire de novo*.

#### BOND.

*And warrant of attorney—Contract in consideration of marriage—Statute of Frauds.*—W. M. had given a bond and warrant of attorney to secure the repayment of a sum of money. Judgment had been entered up, but not executed; the bond and warrant of attorney came into the possession of L. as personal representative of the original obligee. She was on terms of affectionate friendship with W. M., and often said that he had been unfairly treated, in being made to enter into these securities. L. had in early life received from the father of W. M. a conveyance of some property in India; the deed of conveyance

was expressed to be for a consideration of 10,000 rupees. In truth the money consideration was, if any, a debt of 1,200 rupees; the rest was a purely voluntary gift, and no money whatever passed when the conveyance was executed. W. M. was about to marry, and when his marriage was in contemplation, discussions arose about the bond and warrant of attorney. W. M.'s father told L. that he was advised, if she did not abandon the claim on the bond and warrant of attorney against his son, to execute a deed which would put an end to the conveyance of this Indian property as a voluntary conveyance made without consideration. In his depositions, he said that L. promised not to enforce the bond and warrant of attorney, if he would abstain from interfering with the conveyance. Other evidence was given of declarations by her, that she "had abandoned" the claim, and of a promise, often repeated, that she would never trouble W. M. about it.

*Held*, that this promise, if it constituted a contract, was not a contract "in consideration of marriage," so as to bring it within the words of the Statute of Frauds. *Jordan v. Money*, 5 H. of L. 185.

#### BOTTOMRY BOND.

See *Freight*.

#### CHARITY.

*Fraudulent sale of stock by secretary—Liability of trustees—Negligence—Misdirection.*—Trustees of a charity in Dublin, incorporated by act of Parliament, and having a common seal, possessed stock in the public funds, which stock was in Ireland, registered in the Bank of Ireland. G., the secretary of the incorporated trustees, was allowed to have the seal in his possession. Five several powers of attorney prepared in different years, sealed with the seal of the incorporated trustees, the due affixing of which seal was attested by witnesses, who, though without any fraudulent intention, attested what was not true, since the seal was affixed by the unauthorised acts of the secretary alone, were presented to the bank, and the stock was transferred. The facts were afterwards discovered, and G., the secretary, was indicted and convicted. By a power of attorney duly executed, the trustees then authorised C. to transfer the stock, but the bank refused to make the transfer. An action was brought by the trustees on this refusal; the judge who tried the cause told the jury that if, under these circumstances, the trustees had so negligently conducted themselves as to contribute to the loss, the verdict must be given for the bank. On exceptions for this direction: *Held*, that it was wrong. *Bank of Ireland v. Evans' Charity Trustees*, 5 H. of L. 889.

#### COMMITTEE.

See *Lunatic*.

#### CONTRACT.

See *Bond*.

#### COSTS.

See *Husband and Wife*.

#### CREDITOR.

See *Banking Company*.

#### DIRECTORS.

See *Banking Company*.

See *Injunction*.

## DOMICILE.

## EQUITY.

*Will not interfere with enforcing legal right—Abandonment—Representations.*—When a person possesses a legal right, a court of equity will not interfere to restrain him from enforcing it, though between the time of its creation and that of his attempt to enforce it, he has made representations of his intention to abandon it. Nor will equity interfere even though the parties to whom these representations were made, have acted on them, and have, in full belief in them, entered into irrevocable engagements. To raise an equity in such a case, there must be misrepresentation of existing facts, and not of mere intention (Lord St. Leonards *dissentiente*).

Per Lord St. Leonards. "It is immaterial whether there is a misrepresentation of a fact as it actually existed, or a misrepresentation of an intention to do or abstain from doing an act which would lead to the damage of the party whom you thereby induced to deal in marriage, or in purchase, or in anything of that sort, on the faith of that representation."

*Jordan v. Money*, 5 H. of L. 185.

## EVIDENCE.

*Of single witness cannot be read against answer.*—The evidence of a single witness cannot be received against the answer of a defendant, unless there are circumstances which go to corroborate the witness as against the answer.—*Jordan v. Money*, 5 H. of L. 185.

And see *Lumatic*.

## FRAUDS, STATUTE OF.

See *Bond*.

## FREIGHT.

*Action for—Plea—Bottomry bond—Monition from Admiralty Court.*—In an action by a shipowner against the charterers for freight, the charterers pleaded that after the freight had been earned and after the commencement of the suit the obligee of a bottomry bond, by which ship and freight were hypothecated, instituted in the Court of Admiralty a suit against ship and freight whereon a monition issued, commanding the plaintiff to bring into court the proceeds of the wreck and stores of the ship, and the defendants to bring into court the money due for freight, to abide the judgment of the court, and that the defendants had done so.

*Held*, affirming the judgments of the Courts of Exchequer and Exchequer Chamber, that this was a good plea in bar to the action.

Construction of the 3 & 4 Vict. c. 65.—*Place v. Potts*, 5 H. of L. 388.

## HUSBAND AND WIFE.

*Assignment of reversionary interest in leaseholds—Appeal—Costs.*—This was an appeal against an order of the Master of the Rolls, who had decided that a wife's reversionary interest in leaseholds could not be assigned by the husband, if that interest was of such a nature that it could not possibly vest in the wife in possession during the coverture. (See 16 Beav. 38.) When the appeal was called on, no one appeared on either side, and therefore

The appeal was dismissed.—*Day v. Duberley*, 5 H. of L. 388.

## INJUNCTION.

*Staying proceedings in foreign court—Public company—Domicile—Scotch Iron Company with London Agency Office—Service of notice.*—If the circumstances of a case are such as would make it the duty of one court in this country to restrain a party from instituting proceedings in another court here, they will also warrant it in imposing on him a similar restraint, with regard to proceedings in a foreign court.

The fact of a foreigner having property in this country, enables the court here to make effectual an injunction issued to him; but especially in the case of a foreigner who seeks no assistance from the court here, the issuing of such injunction ought clearly to be shewn to be required, as conducive to justice.

Per Lord St. Leonards: A company may have two domiciles, and places of business may, for the purpose of founding jurisdiction, be treated as places of domicile, and service there is sufficient.

Where there is a plain equity in favour of an injunction, and the representatives of the real and personal property who seek it are in this country, the court will grant it, and restrain proceedings in the courts of a foreign country. In such a case, the court will decide upon a consideration of all the circumstances, and require parties here to take or omit such steps in a foreign court as the ends of justice may require. The particular provisions of the foreign law applicable to a transaction, proceedings as to which in a foreign court are thus restrained must not be disregarded.

A company was chartered in Scotland for the manufacture of iron. Its manufactory and chief office of management were there; it had agents for the sale of the goods in different parts of Scotland and England, and it possessed real estate in both countries. A., a large shareholder in the company, and possessed of real and personal property in England and Scotland, was the company's agent for the sale of goods in London, and was domiciled here. When he died he made a will in the English form and appointed as his executors persons who were resident in both countries; his heir was one of those persons, and was also the person who succeeded him in the London agency for the company. Probate of the will was taken out in England; and such of the executors as thought fit to apply to the Scotch court were, according to the Scotch law, confirmed in the execution of the will. An administration suit was instituted in the Court of Chancery, and the usual order for a general account of the debts and assets made. After the date of this order the Iron Company took proceedings in the Scotch courts against the real and personal estate of the testator in Scotland. Notice of an injunction at the suit of the executors was served on the company's agent in London and on the company's manager in Scotland: the company did not appear, and the injunction was issued. The company then moved to dissolve the injunction. No order was made.

*Held* (Lord St. Leonards *dissentiente*) that the injunction could not be maintained.

*Quære.* Whether service of notice of injunction on an agent when the principal is out of the jurisdiction can be good service, especially when that agent is merely an agent for the sale of the goods of the principal?

Service of notice on one member of a corporation is sufficient.—*Carron Iron Company v. Macleod*, 5 H. of L. 416.

And see *Banking Company*; *Equity*.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, NOVEMBER 8, 1856.

### JUDICIAL CHANGES.

#### THE CHIEF JUSTICE OF THE COURT OF COMMON PLEAS.

THE present Term has opened with two events of great importance which materially affect both the Bench and the Bar, namely, the decease of the Lord Chief Justice of the Court of Common Pleas, and the retirement of Mr. Baron Platt. On this, as on similar occasions, "rumours have filled the air" regarding the successors to these eminent legal positions. According to the usual rule, Sir Alexander Cockburn, the Attorney-General, appears to be entitled to the chief seat in the Common Pleas. In the event of his accepting the appointment, Sir Richard Bethell would become Attorney-General, and several leading counsel are named for the honourable appointment of second law officer to the Crown. Amongst them are Mr. Edwin James, Q. C., the recorder of Brighton; Mr. Collier, Q. C., the member for Plymouth; Mr. Wilde, Q. C., of the Northern Circuit, and other distinguished members of the Inner Bar.\* Such are the hopes and expectations either of the learned gentlemen themselves, or of their professional friends, or the conjectures of the various reporters of the press, who endeavour to stimulate, if they cannot satisfy, the thirst for knowledge on such interesting subjects.

If, however, it be true (as asserted at the time we write) that the Attorney-General has positively declined the honour of being the second Lord Chief Justice (looking forward to a still higher position), then several reports are in circulation of the probable successor of Sir John Jervis. We believe the favourite candidate is Sir Frederick Thesiger, who on a former occasion, when Attorney-General, advanced to the threshold of the same distinguished post, who was also some time ago predicted to be the successor of the present Speaker of the House of Commons, and who, more lately, the present Administration intended to raise to the dignity of a peerage for life, as one of the law lords of the ultimate Court of Appeal. These high grounds give support to the general rumour.

\*The names of Mr. Knowles and Mr. Hoggins have also been mentioned, and, in case of their promotion, Mr. Warren, M.P., will probably be the Attorney-General of the County of Salina.

Yet another most popular name has been circulated with almost equal confidence—that of Mr. Justice Erle, who (though we believe a Whig) was raised to the Bench by the Lord Chancellor of the late Sir Robert Peel's administration. No man can possibly be more highly esteemed in all respects than this eminent judge, and it may be said that there is a striking precedent for the promotion of a puisne judge to the chief seat, in that of Mr. Justice Abbott, afterwards Lord Tenterden; but of late years the general rule has prevailed that when a judgeship is accepted, it is deemed the termination of the lawyer's ambition. It is argued that the complete independence of the Bench is best secured by removing each member of it from any expectation of a Prime Minister's favour. Indeed, some years ago, on the decease of Lord Abinger, it was said that Mr. Baron Parke, then the senior of the court, and a Conservative, entertained expectations (or his friends for him) that the Chief Seat would be offered to him; but it may be presumed that the rule of judicial policy we have referred to, or the higher claims of Sir Frederick Pollock prevailed over those of the Senior Baron.

We would now proceed to state some particulars of the career of the late eminent Chief Justice, with some remarks on his judicial character. He was the second son of Thomas Jervis, Esq., Q. C., formerly Chief Justice of Chester, and for many years Counsel to the Admiralty. He was born in 1802, and was consequently only fifty-four at the time of his death.

It appears that Sir John Jervis served for some time in the army, but was induced to change his profession, and having passed through the usual course of a student, was called to the bar in the year 1824 by the Honourable Society of the Middle Temple. He selected the Oxford and Chester Circuits, and represented the City of Chester in Parliament from 1832 till his elevation to the Bench.

He was the author of several valuable works, amongst others of a "Treatise on the Office and Duties of Coroners, with Practical Forms;" of a "Collection of the Rules of Court, and Statutes in relation to Pleading and Practice," accompanied by very valuable notes,



and of a "Treatise on Criminal Law." Besides these works, he was associated with Mr. Crompton, and afterwards with Mr. Younge, in their valuable series of Reports.

He obtained a patent of precedence in 1839, and became Attorney-General in the year 1846; he filled that important office with great ability. It will be remembered that, in the year 1848, he prevailed, without an exception, in the Government prosecutions against the political offenders who attempted to disturb the public peace. In 1850 he succeeded Lord Truro, as Chief Justice of the Common Pleas, when that noble lord was promoted to the office of Lord Chancellor.

Having thus stated the principal events in the career of Sir John Jervis at the bar, we proceed to the consideration of his judicial character; and for this purpose, we deem it expedient to make some extracts from the able articles which have appeared in the public journals:—

"It was feared by many that an advocate by some thought unscrupulous, and, at any rate, distinguished by dexterity rather than profundity, might not have worn the ermine of the bench with becoming gravity and impartiality. This fear, we are bound to say, proved entirely without foundation. The common sense which Sir John Jervis possessed, in addition to his great professional experience, kept him clear of all judicial blunders, and in criminal matters, which form so large a portion of judicial duties, an abler judge in all probability never sat on the bench. His sagacity and acuteness here found a fitting field, and his dexterity and sound practical sense stood him in good stead, whether in detecting crime or in exposing the fallacies put forward by counsel.

"In his purely legal decisions he shewed the same qualities, and we believe we only utter the opinion of the profession, which now meets together after the Long Vacation in Westminster Hall, when we say that in all respects the late Sir John Jervis was an excellent judge."\*

We also avail ourselves of the following sketch by a graphic pen:—

"It would probably be quite within the limits of truth to say, that in the two intellectual gifts of rapid apprehension and rapid ratiocination, no public man of the present day was within the range of his own professional pursuit, the equal of the late Sir John Jervis. Even to those most accustomed to witness the effects of forensic training in sharpening and quickening the intellectual faculties, there was something almost preternatural in the swiftness of glance with which the deceased Chief Justice took in all the bearings of a complicated subject, which, till he came into court, was wholly unfamiliar to him—in the facility with which he detected every artifice, exposed every sophistry, and pursued with an unerring logic the longest train of legal reasoning to its remotest consequences. As a mere dialectic display, few exhibitions could be more gratifying to an intellectual mind than to watch Sir John Jervis, in the Common Pleas, making his way through the intricacies of a long patent cause, or playfully dragging to light the skillfully disguised fallacy which formed the basis of some solemn and plausible argument

that might easily have imposed on a judge less skillfully astute than himself.

"The mode in which the whole was done made the best part of the exhibition. Not a word was wasted. Subtle and swift, the keen shaft of logic was shot, and the solemn man was abated, and the ponderous man came down with a crash, and—greater miracle still—the incessantly talkative man was silenced. Even the ablest and the clearest-headed confessed that there was 'no standing up against Jervis;' and by a sort of tacit agreement it came to be understood that as little nonsense as possible was to be talked before him. And all this was done without pedantry and without harshness. Everything was accomplished with the easy, half-careless manner of a clear-sighted man of the world."

"The presiding judge never spoke except to the point, and, as far as possible, repressed any deviation from this laudable habit in others. The consequence was, that causes were got through with a rapidity which, to those accustomed to the more cumbrous procedure of other sages of the law, seemed almost incredible. And yet this rapidity was not purchased at the expense of any aloofness or inaccuracy. There is probably no judge on the Bench against whose *Nisi Prius* rulings so few exceptions have been successfully urged. Still it is undeniable that the manner of the Chief Justice had its disadvantages. Decorous people professed to be shocked at its total want of conventional dignity; but even those who are more disposed to regard the substance than form were obliged to admit there was a carelessness, a levity, sometimes even cynicism, about the deportment of Sir John Jervis, which would on all accounts have been as well away. But these were, after all, minor defects; and we believe we shall find a very general concurrence in the opinion we venture to express, that upon the whole it will not be easily adequately to supply the void which the death of Sir John Jervis has left on the judicial Bench."

#### THE RETIREMENT OF MR. BARON PLATT.

The resignation of this much-respected and learned Baron took place on the first day of Term. It will be recollected by many of our older readers that he was the son of Mr. Thomas Platt, a gentleman exceedingly well known and highly esteemed during a long and prosperous life. Mr. Platt, the father of the Baron, was a solicitor, and we believe for many years the legal adviser of the proprietors of the *Times* newspaper. He was the Chief Clerk of the Lord Chief Justice Ellenborough during the whole of his judicial life. His knowledge of the practice of the courts was so great, that he was consulted by the attorneys and their clerks almost incessantly on doubtful points, and as a just return for his invariable kindness the great majority of the judges' summonses and orders were obtained at his chambers.

Mr. Baron Platt was called to the Bar by the Honourable Society of the Inner Temple on the 9th of February, 1816; he went the Home Circuit; and became Queen's Counsel in Hilary Term, 1835. He was in large practice at the Bar, and gave great satisfaction to his clients by his zeal and energy in their

\* From the *Times* of the 3rd November.

\* From the *Daily News* of 4th November.

behalf. He was appointed a Baron of the Exchequer on the 28th of January, 1845, in the place of Mr. Baron Gurney.

It is justly said by one of our contemporaries that—

"Of the learned Baron this, at all events, may be affirmed, that he sustained through his whole career the character of a manly, upright, and even-handed magistrate. The appellation by which he was playfully known in the profession, the "True British Judge," pointed at once to certain defects and to many valuable qualities—qualities especially valuable in an age when a morbid tendency to an excessive subtlety of decision has too often led to a preference for the forms of law over the substance of justice, and a still more dangerous tendency to exalt the power of the judge at the expense of the proper functions of the jury, has led to some encroachment on those constitutional landmarks which it was the just pride of Mr. Baron Platt to preserve unimpaired in all their integrity."

#### THE NEW JUDGE.

The vacancy occasioned by the retirement of Mr. Baron Platt has been filled up by the appointment of William Henry Watson, Esq., one of her Majesty's counsel. Mr. Watson, before devoting his attention to the law, was in the army, and served his country in the Battle of Waterloo. On peace taking place, he entered himself as a student at the Honourable Society of Lincoln's Inn, and was called to the Bar on the 8th June, 1832. He went the Northern Circuit. In 1843 he was promoted to the rank of Queen's counsel. Previously to this time, namely, in the year 1841, he was elected a member of Parliament for the borough of Kinsale, and continued its representative till the next general election in 1847. In 1854 he was elected for Hull.

He was chairman of a Committee of the House of Commons on the Fees of Courts of Law and Equity, and we are indebted to the labours of that committee for the relief of many of the burthens on the suitors of the superior courts.

It is, we believe, the general opinion of both branches of the profession that this appointment reflects much credit on the Lord Chancellor,\* as a just and proper selection from the large number of leading members of the bar, many of whom look forward to a puiſne judgeship as the summit of their ambition.

We think the following extract from the *Daily News* truly expresses the opinion of the public, as well as the profession, on the merits of this appointment:—

"Mr. Watson, though he may not be a showy judge, will, there is every reason to believe, make a sound and serviceable one. It is on these grounds alone that the public will be disposed to judge of the appointment.

"At the same time, it would be affectation to deny

\* It will be recollected that the appointment of the three judges is vested in the Prime Minister, and of all the puiſne judges in the Lord Chancellor.

that other and less legitimate considerations may not impossibly be suggested as having had something to do with his elevation. Mr. Watson has for some time been talked of by his friends as an ill-used, or, at all events, a somewhat unfortunate man. His name has frequently been before the public in connection with the appointment which he has at length obtained, and by those with whom political claims are paramount to all others, it has been made a topic almost of reproach to more than one Liberal administration, that while younger men have been promoted, Mr. Watson, though a staunch and consistent political adherent, has been repeatedly passed by. We cannot shut our eyes to the notorious fact that considerations of the kind referred to, have too often had a paramount influence in appointments to the judicial bench.

"It is satisfactory to be able to say—as we can say conscientiously—that Mr. Watson's elevation is the fair meed of professional position; that in the present state of Westminster Hall it would not have been easy to name a man on the whole better qualified for immediate promotion; and that Lord Cranworth has been able, without neglecting a political adherent, to make a selection which would, under any circumstances, have done no discredit to his integrity and his discernment."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### REFORMATION OF JUVENILE CRIMINALS. (19 & 20 Vict. c. 109).

The preamble recites the 17 & 18 Vict. c. 86, and the 17 & 18 Vict. c. 74.

1. School to which youthful offenders committed need not be named in the sentence.
2. Supplemental orders may be made.
3. Young persons not to be sent to schools to which parents, &c., object.
4. As to settlement and chargeability of young persons sent from Scotland to any school out of Scotland.
5. Nothing to diminish power of Secretary of State to order removals, &c.
6. Expenses of conveyance, how to be met.
7. Governor of prison to send duplicate of warrant of commitment, if it exists, with child, to reformatory; if not, then a copy of warrant.
8. What is sufficient evidence as to certificate of school and identity of child.
9. Penalty on persons willfully inducing young persons to abscond from reformatory.
10. Secretary of State to publish list of all reformatory or industrial schools in London and Edinburgh Gazettes.
11. Justices may use the forms set forth in the schedule.
12. Recited acts and 18 & 19 Vict. c. 87, to be read as part of this act.
13. Interpretation of the word "court."

The following are the title, preamble, and sections of the act:—

**An Act to amend the Mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools.**  
[29th July, 1856.]

WHEREAS it is expedient to amend the provisions of two acts passed in the Session of Parliament holden in the 17th and 18th Vict., intituled, respectively, An Act for the better Care and Reformation of Youthful Offenders in Great Britain, and An Act to render Reformatory and Industrial Schools in Scotland more available for the Benefit of Vagrant Children: Be it therefore enacted—

1. It shall not be necessary at the time of passing sentence for any court, judge, sheriff, or magistrate proceeding under the said first-recited act to name the particular school to which any youthful offender is to be sent, but it shall be sufficient for such court, judge, sheriff, or magistrate to direct that such youthful offender be sent to such school (being a school duly certified under the said act, and the directors or managers of which may be willing to receive him) as may thereafter, and before the expiration of the term of imprisonment to which he or she has been sentenced, be directed by the chairman or deputy chairman of the said court, or by the said judge, sheriff, or magistrate.

2. Any court, judge, sheriff, or magistrate, or the chairman or deputy chairman of such court, having made an order under the authority of either of the said recited acts or of this act for sending any young person to any reformatory or industrial school, or in Scotland to any similar institution, may, at his or their discretion, make a supplemental order, in England at any time before the expiration of the term of imprisonment to which he or she has been sentenced, and in Scotland at any time within fourteen days of the date of the order, exchanging the name of such school or institution for the name of any other school or institution to which he or she might in the first instance legally have been sent, provided the managers thereof be willing to receive him or her, and such young person shall be sent or transferred to such last-mentioned school or institution accordingly.

3. If the parent or guardian or nearest surviving relative of any young person who may have been sent to or whom it may be intended to send to a school or institution, under the provisions of either of the said recited acts or of this act, certify to the judge, sheriff, magistrate, or court, or the chairman or deputy chairman thereof, by whom the order may have been or may be about to be made, within fourteen days from the day of the making of such order or supplemental order as aforesaid, that they object to such young person being sent to or detained in the school or institution in Great Britain, duly certified as aforesaid, and shall signify their desire that such young person may be sent thereto, and shall prove that the managers thereof are willing to receive such young person, and shall pay or find sufficient security to pay any additional expense which his or her removal may occasion, over and above that of sending him or her to the certified school on which the order shall have been made, in case the removal shall take place before the expiration of his or her imprisonment, and in case the removal shall take place from one such school or institution to another then to pay the whole expense, such court, chairman, deputy chairman, judge, sheriff, or magistrate shall direct such young person to be sent to such last-mentioned school or institution accordingly.

4. Provided always, That if any such young per-

son who shall, under the provisions of this act, be sent from Scotland to any school out of Scotland, shall not have right to a settlement in any parish therein, and might have been removed from Scotland under the provisions of the eighth and ninth of Queen Victoria, Chapter eighty-three, at the instance of the inspector of the poor of the parish to which such young person has become chargeable, had he or she not been sent out of Scotland under the provisions of this act, the chargeability on such parish for such young person shall, on his or her being so sent out of Scotland, cease and determine.

5. Nothing in this act contained shall be construed to take away or diminish the power of the Secretary of State to direct the removal or discharge of young persons from reformatory and industrial schools, or in Scotland from other similar institutions, as set forth in the said recited acts.

6. The expense of conveying any young person sentenced in England under the first-recited act or this act to the reformatory school to which he has been committed, under an original or supplemental order, except any extra or additional expense incurred in conveying any young person, at the request of his or her parents, guardians, or relatives, to any school or institution other than the nearest duly certified school, shall be defrayed by the treasurer of the county, city, or borough in which such sentence was in the first instance passed. The expense of conveying any young person sentenced in Scotland under either of the said recited acts or this act to the reformatory or industrial school or other similar institution to which he or she has been ordered to be sent shall, except as aforesaid, be defrayed by the parochial board of the parish on which such young person, if a pauper, would have been chargeable in the first instance. In case of the Secretary of State ordering the removal of any young person from one school or institution to another, it shall be lawful for the Commissioners of Her Majesty's Treasury, on the representation of such Secretary of State, to defray the expense of such removal out of any funds which may be provided by Parliament for the purpose.

7. It shall be the duty of the governor or keeper of every gaol or house of correction having the custody under sentence of any young person who is ordered to be sent to any reformatory or industrial school, or in Scotland any other similar institution, to forward with such young person to such school or institution an original duplicate, if any such duplicate exists, of the warrant of commitment under which such young person has been imprisoned, and if no such duplicate exists to forward with such young person a copy of such warrant, and at the foot of such duplicate or copy to make a memorandum stating that the young person named therein and sent therewith is identical with the person delivered with the warrant of which the instrument is a duplicate or copy to such gaol or house of correction, and the said memorandum shall be signed by the governor or keeper aforesaid, and the possession of such warrant or copy of a warrant, with such memorandum so signed, shall be a sufficient authority for the detention of such young person in such school or institution.

8. Whenever it shall be necessary to prove that any reformatory or industrial school, or other similar institution, is duly certified or sanctioned by the Secretary of State, the production of an attested copy of the certificate shall be sufficient evidence thereof; and the production of an original duplicate of the warrant of commitment, or a copy of the

warrant of commitment, with a memorandum as aforesaid, signed or purporting to be signed by the governor or keeper of the gaol or house of correction from which the young person in question was sent, as hereinbefore provided, accompanied by a statement signed, or purporting to be signed by the manager or superintendent or master or matron of any reformatory or industrial school or other similar institution, that the young person named in such warrant or copy was duly received into and is at the signing thereof detained in such school or institution, or has been otherwise disposed of according to law, shall in all proceedings whatsoever be sufficient evidence of the due conviction and imprisonment, and subsequent detention and identity, of the young person named in such warrant.

9. When any young person has been sentenced under the first-recited act to be detained in any reformatory school, duly certified by the Secretary of State, any person who shall directly or indirectly wilfully withdraw such young person from such school or institution, or induce him or her to abscond therefrom before he or she has been regularly discharged, shall be liable for every such offence to a penalty not exceeding five pounds, to be recovered on summary complaint before any justice of the peace, sheriff, or magistrate, at the instance of any officer of such school or institution, or other person authorised by the directors or managers thereof, and failing payment, the offender may be imprisoned for any period not exceeding sixty days, and such penalty shall be paid over to the treasurer of the institution in which such young person was placed for the general purposes thereof.

10. One of her Majesty's principal secretaries of state, shall, within one calendar month after the passing of this act, cause to be published in the London and Edinburgh Gazettes a list of all reformatory or industrial schools or other similar institutions which have been already certified under the provisions of either of the said recited acts; and whenever such Secretary of State shall at any time hereafter grant a certificate to any new school or institution, he shall, within one calendar month, cause a notice thereof to be published in the said Gazettes, and such publication shall be a sufficient evidence of the fact of such school or institution having been certified to justify any court, judge, sheriff, or magistrate to commit any young person thereto, subject to the provisions of the said recited acts and of this act, and of any other act or acts relating to such schools or institutions; and whenever the Secretary of State shall withdraw or cancel the certificate granted to any school or institution, he shall give notice of such withdrawal in the said Gazettes within one calendar month of the date thereof.

11. It shall be lawful for any justice or justices of the peace in England or Wales, proceeding under this act, or under the said first-recited act, or under the act passed in the last session of Parliament, chapter eighty-seven, for amending the same, to use the forms of conviction and commitment, complaints, summonses, orders, and warrants, set forth in the schedule to this act annexed, so far as the same are applicable to each case.

12. The said recited acts of the 17 and 18 of her present Majesty, and the said act of the 18 and 19 of her reign for amending the same, shall be read as part of this act.

13. The word "court" shall include all persons having authority under the said recited acts or

either of them, or any act extending or amending the same, to commit young persons to reformatory or industrial schools or other similar institutions.

[It is considered unnecessary to set forth the forms contained in the schedule to the act].

#### SEAMEN'S SAVINGS BANKS.

(19 & 20 Vic. c. 41).

1. Power to Board of Trade to establish savings banks for seamen.
2. Power to constitute shipping offices branch savings banks.
3. Commissioners for reduction of national debt to receive deposits and pay interest.
4. Board of trade to make regulations for conduct of savings banks.
5. Application of deposits of deceased depositor.
6. Punishment for forgery or for making false representations in order to obtain deposits or interest.
7. Expenses of act how to be defrayed.
8. Accounts and copy of regulations to be laid before Parliament.
9. Mode of criminal proceeding.

The following are the title, preamble, and sections of the act:—

An Act to make further Provision for the Establishment of Savings Banks for Seamen.

[7th July, 1856].

WHEREAS by the Merchant Shipping Act, 1854, certain powers were given to the Commissioners for the Reduction of the National Debt for the purpose of establishing savings banks for seamen: And whereas it has since been found to be expedient that the immediate management and control of such savings banks should be placed in the hands of the Board of Trade: Be it enacted—

1. The Board of Trade may establish in London a central savings bank for seamen, together with branch savings banks at such ports and places in the United Kingdom as they may think expedient, and they may receive at such banks deposits from or on account of seamen, or the wives, widows, and children of seamen, so, however, that the aggregate amount of deposit standing at any one time in the name of any one depositor shall not exceed £200.

2. The Board of Trade may constitute any shipping office established under the Merchant Shipping Act, 1854, a branch savings bank for the purposes of this act, and may require any shipping master belonging to such office to act as agent of the said board in carrying this act into effect, and his duties as such agent shall thereupon be deemed to be part of his duties within the meaning of the Merchant Shipping Act, 1854.

3. The Commissioners for the Reduction of the National Debt may from time to time, on the request of the Board of Trade signified by writing by one of the secretaries or assistant secretaries of such board, receive from her Majesty's Paymaster-General the monies received by the said board as deposits in savings banks established under this act; and may also from time to time, on the like request signified in like manner, repay to her Majesty's Paymaster-General to the account of the said board the monies so received by them as aforesaid; and the said

commissioners shall invest all monies so received by them as aforesaid in the same manner in which monies received from trustees of savings banks are invested by them, and shall pay to her Majesty's Paymaster-General, to the account of the Board of Trade, interest upon the monies so received by them as aforesaid so long as the same continue in their hands, at the same rate at which they pay interest for the time being upon the monies received by them from the trustees of savings banks.

4. The Board of Trade may make and from time to time alter such regulations as they may think fit with respect to the persons entitled to become depositors, to the making and withdrawal of deposits, the amount of deposits, the rate and payment of interest, the rights, claims, and obligations of depositors, and with respect to all other matters incidental to carrying this act into execution; and all regulations so made shall be binding on the parties interested in the subject matter thereof to the same extent as if such regulations formed part of this act; and no legal proceeding shall be instituted against the Board of Trade, or against any shipping master or other public officer employed on or about such savings banks, on account of any such regulations, or on account of any act done or left undone in pursuance thereof, or on account of any refusal, neglect, or omission to pay any deposit or interest thereon, unless such refusal, neglect, or omission arise from fraud or wilful misbehaviour on the part of the person against whom proceedings are instituted.

5. All sums of money due from the Board of Trade to the estate of any deceased person entitled to any deposit in any savings bank established under this act shall be paid and applied by such board to the same persons to whom and in the same manner and subject to the same conditions on and subject to which the money and effects of a deceased seaman are payable and applicable under the provisions of the Merchant Shipping Act, 1854.

6. Every person who, for the purpose of obtaining, either for himself or for another, any money deposited in any savings bank established under this act, or any interest thereon, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document purporting to show or assist in showing a right to any such money or interest, and every person who for the purpose aforesaid makes use of any such forged or altered document as aforesaid, or who for the purpose aforesaid gives or makes, or procures to be given or made, or assists in giving or making or procuring to be given or made, any false evidence or representation, knowing the same to be false, shall on conviction be punishable with penal servitude for a term not exceeding four years, or with imprisonment, with or without hard labour, for any period not exceeding two years, or, if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

7. The Board of Trade may, out of the interest paid by the Commissioners for the Reduction of the National Debt on the monies paid to them under this act, pay any expenses incurred in carrying this act into effect.

8. An annual account of all deposits received and repaid by the Board of Trade under the authority of this act, and of the interest thereon, shall be laid before both Houses of Parliament; and a copy of all regulations made by this board under the autho-

riety of this act shall likewise be laid before both Houses of Parliament.

9. All criminal proceedings under this act shall be carried on in the same manner as similar proceedings under the Merchant Shipping Act, 1854, and all rules of law, practice, and evidence which are applicable to such last-mentioned proceedings shall be applicable to criminal proceedings under this act.

#### METROPOLIS LOCAL MANAGEMENT.

(19 & 20 Vict. c. 112).

The preamble recites the 18 & 19 Vict. c. 120.

1. Church rates where made in open vestry before passing of the act 18 & 19 Vict. c. 120, to continue to be so made.
2. Nothing in this act or in 18 & 19 Vict. c. 120, to affect ecclesiastical districts.
3. Other powers of vestries and like meetings declared to have been transferred to vestries under act 18 & 19 Vict. c. 120, except powers transferred to district boards.
4. Occupiers may claim to be rated.
5. Compositions not to be disturbed, and landlord's liability not to be affected.
6. Right of occupier so claiming to vote in elections.
7. Payment of church rates not necessary as a qualification.
8. Rental to be determined by column headed "rateable value."
9. Regulation of meetings of vestries constituted by 18 & 19 Vict. c. 120.
10. Section 144, of 18 & 19 Vict. c. 120, declared to extend to authorise applications to Parliament for providing parks, &c.
11. District boards and vestries empowered to take ground to be maintained as an open space or pleasure ground.
12. Recited act and this act to be as one.

The following are the title, preamble, and sections of this act:—

An Act to amend the Act of the last Session of Parliament, Chapter One Hundred and Twenty, for the better Local Management of the Metropolis.  
[29th July 1856].

WHEREAS it is expedient to amend the act of the last session of Parliament, chapter 120, "For the better Local Management of the Metropolis," is herein-after mentioned: be it therefore enacted:

1. Where at the time of the passing of the said act the power of making church rates or rates in the nature of church rates in any parish was vested in any open vestry, or in any meeting in the nature of an open vestry meeting, or in any meeting of the parishioners, inhabitants, or ratepayers generally, or of such of the parishioners, inhabitants, or ratepayers as were rated at or above any specified amount or value (whether such vestry or meeting were holden for the parish at large or for any liberty or other district therein), such power shall not be deemed to have become vested in the vestry constituted in such parish under the said act, but shall be exercised as if the said act had not been passed: Provided always, that this act shall not

affect any such rate made before the passing thereof by any such vestry as last aforesaid.

2. Nothing in the said act or this act shall affect or be deemed to have affected any power of electing or appointing churchwardens or making church rates, or other power which, at the time of the passing of the said act, was vested in any such open vestry or meeting as aforesaid, or any elected or other vestry, where such vestry or meeting acts exclusively for any district (by whatever denomination distinguished) created for ecclesiastical purposes only.

3. Save as herein-before otherwise provided, all the duties, powers, and privileges (including such as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor), which might have been performed or exercised by any open or elected or other vestry or any such meeting as aforesaid in any parish, under any local act or otherwise, at the time of the passing of the said act of the last session, shall be deemed to have become transferred to and vested in the vestry constituted by such last-mentioned act; except so far as any such duties, powers, or privileges may in the case of a parish included in any district mentioned in schedule (B.) to the said act be vested by section ninety thereof in the Board of Works of such district: provided that all duties and powers relating to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, which at the time of the passing of the said act were vested in or might be exercised by any guardians, governors, trustees, or commissioners, or any body other than any open or elected or other vestry, or any such meeting as herein-before mentioned, shall continue vested in and be exercised by such guardians, governors, trustees, or commissioners or other body as aforesaid.

4. It shall be lawful for any person occupying any tenement within any parish to claim to be rated to the relief of the poor in respect thereof in the rate for the time being, and in all rates to be thereafter made in respect of such tenement, whether the landlord be or be not liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming, by notice in writing left at the office or place of residence of the overseers of the poor of the parish, or one of them, and actually paying or tendering at such office or place of residence the full amount of the last made rate then payable in respect of such premises, such overseers are hereby required to put the name of such occupier on the rate for the time being, and also, without further claim, to put his name upon every subsequent rate made during the time such occupier continues in the occupation of the same premises; and in case the said overseers neglect or refuse so to do, such occupier shall nevertheless, for the purposes of the said act, be deemed to have been rated to the said rate in respect of such premises, from the period at which the rate for the time being in respect of which he so claimed to be rated as aforesaid was made, and thenceforth so long as he continues in the occupation of the same premises: provided always, that every person so claiming as aforesaid shall in respect of every rate for the relief of the poor made after such claim as aforesaid, while he continues to occupy the same premises,

be liable to the same extent and in the same manner as if his name had been put on such rate.

5. Provided also, that in cases where, by any composition with the landlord, a less sum is payable than the full amount of rate which, except for such composition, would be due in respect of the same premises, the occupier claiming to be rated shall not be bound to pay or tender more than the amount then payable under such composition: provided also, that where, by virtue of any Act of Parliament, the landlord is liable to the payment of the rate for the relief of the poor in respect of any premises occupied by his tenant, nothing herein contained shall be deemed to vary or discharge the liability of such landlord; but in case the tenant who has been rated for such premises in consequence of any such claim as aforesaid make default in the payment of the rate for the relief of the poor payable in respect thereof, such landlord shall be and remain liable for the payment thereof, in the same manner as if he alone had been rated in respect of the premises so occupied by his tenant.

6. Any occupier who under this act is rated or deemed to be rated to the relief of the poor in any parish, and has been so rated or deemed to be rated for one year next before any election of vestrymen or auditors under the said act, shall be entitled to vote in such election, and shall for the purposes of the said act be deemed a ratepayer of such parish, and be entitled to act as such, provided all parochial rates, taxes, and assessments, save and except church rates, due in respect of the same premises at the time of his so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting, have been paid; but such occupier shall not be deemed to be a ratepayer so as to gain a settlement where he would not have gained a settlement if this act had not been passed.

7. The provision in section sixteen of the said act requiring all parochial rates, taxes, and assessments (except as therein excepted) to have been paid shall not be taken to include church rates.

8. And whereas by the 6 & 7 Wm. 4, c. 96 "To Regulate Parochial Assessments," it is required that every rate for the relief of the poor shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule to that act annexed, so far as the same can be ascertained, and in the form in the said schedule are two columns headed respectively "Gross estimated Rental" and "Rateable Value:" and whereas by the said act it is required that in order to qualify a person to be elected a vestryman or auditor he should be rated to the relief of the poor upon a rental of such amount as therein mentioned; and whereas doubts are entertained which of the amounts specified in the said two columns is to be deemed the "Rental" for the purposes of the last-mentioned act:

The amount specified in the said column headed "Rateable Value" shall be deemed the "Rental" for the purposes of the last-mentioned act.

9. Every meeting of any vestry constituted by the said act of the last session, of which and of the special purpose whereof notice is now by law required to be affixed on or near the principal doors of the churches and chapels within the parish, may be convened by transmitting through the post or

otherwise notice, signed by the clerk to the vestry, to each vestryman, at his usual or last known place of abode in England, of the place and hour of holding the same, and the special purposes thereof, three days before the day appointed for such meeting and also by affixing at the same time notice thereof on or near the door of any building where the said meeting is to be holden, and it shall not be necessary that notice of any such meeting shall be further or otherwise signed or published.

10. And whereas doubts are entertained whether the provision in section 144 of the said act of the last session, authorising the Metropolitan Board of Works, where it appears to them that further powers are required for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof, to make applications to Parliament for that purpose, and providing that the expenses of such application may be defrayed as other expenses of the said board, extends to authorise applications to Parliament by such board for powers for providing parks, pleasure grounds, places of recreation, and open spaces, and it is expedient to remove such doubts: the powers given to the said board to make applications to Parliament, and the provision for the expenses of such application, extend respectively to applications to Parliament for the purpose of providing parks, pleasure grounds, places of recreation, and open spaces for the improvement of the metropolis or the public benefit of the inhabitants thereof, and to the expenses of all such applications.

11. Any district board or vestry may take, by agreement or gift, any land or any right or easement in or over land, for any estate or interest therein, and on such terms and conditions as they may think fit, for the purpose of such land being either kept as an open space or being kept and maintained as a pleasure ground for the public benefit of the inhabitants of the district or parish; but this enactment shall not authorise any expenditure to be defrayed by rates, except for the purpose of enclosing, maintaining, planting, and otherwise improving the same.

12. The said act of the last session and this act shall be construed together as one act.

## NOTICES OF NEW BOOKS.

*A Treatise on the Principles of Equity.* By JOHN SIDNEY SMITH, Esq., Barrister-at-law. Maxwell; Sweet; and Stevens and Norton, 1856.

THE practitioners of the Courts of Chancery are in possession of various books of *practice*, more or less full and complete, published within the last few years; but a work on the *principles* of equity was required both by the practitioner and the student. This desideratum has been ably supplied by Mr. Sidney Smith, who, it will be recollected, was an eminent sworn clerk of the Court of Chancery, and in 1846, a few years after the abolition of the six clerks' office, was called to the bar. The learned gentleman has arranged the materials of his valuable volume in the following order:—

The first book comprises.

1. The Nature of Equity and the Early History of the Court of Chancery.
2. Discovery;

3. Injunction.
4. Receiver, *Ne Exeat*, and Sequestration.
5. Assistant Jurisdiction.
6. Concurrent Jurisdiction.
7. Fraud.
8. Account.
9. Dower and Partition.
10. Specific Performance of Agreements; Specific delivery of Chattels, and delivery up of Cancelled or Void Deeds and other Instruments.
11. The exclusive Jurisdiction of the Court.
12. The Jurisdiction of the Court over Property in a Foreign Country. Over Foreign Persons. Foreign Judgments.

The Second Book treats of—

1. Voluntary Settlements.
2. Superstitious and Charitable Uses and Conditions.
3. The Rule against Perpetuities.
4. Alienation and Settlement of Estates.
5. Of a Deed.
6. Modern Settlement.
7. Tenants for Life, and Others as to Apportionment, Income, Incumbrances, and Renewals.
8. Performance and Satisfaction of Covenants.

The Third Book relates to—

1. Intestacy, Donatio Mortis Causa, Domicil, Statute of Distributions.
2. As to Testamentary Dispositions.
3. Partial Intestacy, and the Doctrine of Lapses.
4. Conversion and Election.
5. Administration of Assets, Debts.
6. Ditto. Legacies.
7. Administration of Assets. Interest on Debts and Legacies, Marshalling Assets and Reimbursement.

In the Fourth Book, the following subjects are considered:—

1. Equities between Persons in a Fiduciary Character, or arising from their Relationship.
2. Rights of, and Equities between, Persons who have entered into Contracts or Agreements. Mortgage and Mortgagees.
3. Rights of, and Equities between, Persons who have entered into Contracts or Agreements. Vendor and Purchaser.
4. Rights of, and Equities between, Persons who have entered into Contracts or Agreements. Partners, and Partners and Third Parties.
5. Contribution.
6. Rights of, and Equities between, Husband and Wife.

All these topics of Equity Doctrine and Jurisdiction have been comprehensively treated, and we doubt not that the work will be peculiarly useful to the students of both branches of the profession.

The following is an extract from Mr. Smith's Preface, describing his object in thus presenting a summary of the Principles of Equity as now administered in the Court of Chancery:—

"Although the title of the work is 'Principles of Equity,' the object proposed by the author is an elucidation of the working of the system as applicable to the every-day practice of the barrister's chambers and the solicitor's office. His aim has been, while adapting his treatise to the requirements of the student, by giving him an outline of the system in a concise and readable shape, at the same time to afford to the man in practice the means of ascertaining at a glance the present state of equity jurisprudence as altered by recent statutes and the latest decisions of the court."

*Topics of Jurisprudence connected with Conditions of Freedom and Bondage.* By JOHN C. HURD, Counsellor of Law, U. S. New York: Van Nostrand.

HAVING received this and other works from our American brethren, we are bound to give a brief notice of their contents, especially on a subject which, at the present time, peculiarly agitates the United States, and the progress of which must also be highly interesting in our own country. Mr. Hurd observes in his introduction to the work that—

"It is not probable that readers will be found for these pages unless among two classes of persons. One being those who, by constitution of mind and previous studies, are inclined to that branch of speculation which Chancellor D'Aguesseau, in the first volume of his works (p. 449), calls the metaphysics of jurisprudence, and recommends as a preliminary study for the practical lawyer. There cannot in any country be many whose studies have taken this direction. Such persons are not numerous even in the ranks of the professors and practitioners of legal science. And it would only be in accordance with the prevailing assertions of the tendency of the minds of Americans to subjects of immediately practical use, to say that such persons are more rarely to be found in this than in some other countries of a corresponding degree of intellectual culture. However, whether this is so or not, there are some reasons for believing that the systematic exposition of the elementary principles of legal science is likely to receive increased attention in England and America. It is hoped that some of those whose inquiries have been directed to this subject, may find an interest in the attempt made in these two chapters to state in a consistent form some of the most elementary and abstract principles of jurisprudence, and that the citations given may serve to make more known the works of some European authors, which will be found valuable aids in pursuing this branch of study.

"The other class of persons, among whom it is hoped some will be found to take an interest in the subject of these chapters, is certainly far more numerous:—those who wish to examine those legal questions arising out of the existence of domestic slavery in some of the States of the American Union, which may affect the rights and obligations of the inhabitants of the other States. The importance of these questions at the present time it is unnecessary to enlarge upon. In the following pages it is attempted to state only the most elementary and abstract principles necessary to be established in making a legal examination of the questions, so far as it is possible to do so without making any reference to the fundamental principles of law peculiar to this country. The attempt thus to state, by themselves, and apart from any illustration by actual cases, a connected

system of abstract principles of law applicable to a subject of practical importance, is certainly attended with some difficulty. A discussion, however, which should not be based on some principles admitted by all who may take part in it, would be a logical absurdity; and whatever may be the success of the effort here made in that direction, it cannot but be admitted to be a reasonable endeavour.

"Some of the practical questions whose solution is connected with the accurate determination of the principles indicated in these chapters, will suggest themselves to every reader. And although it is herein intended only to state principles, and ascertain some general rules, without applying them to any of the questions now before the American public, it may give an interest to such abstract discussion to suggest some of those questions to whose examination these inquiries are supposed to be preliminary. The two chapters here offered being intended to be introductory to the consideration of such questions in a treatise, which may be entitled, *A View of the Laws of Freedom and Bondage in the United States*, the contents of the chapters under which the subject will be distributed will, therefore, be here briefly described. It being premised that the view taken will be a purely legal one, that is, entirely distinct from all ethical and political considerations. The two chapters here given will constitute an Elementary or General Part."

The work is ably written, and displays great research into all the authorities bearing on the subjects under consideration.

## LAW AMENDMENT SOCIETY.

### ANNUAL REPORT.

WE consider it expedient that our readers should be made acquainted with the further projects of law reform, suggested by this society. The following is extracted from the report of the council made at a general meeting held on the 8rd instant.

"The council, in meeting the society on the first occasion which has brought them together for the present session, are anxious to make a few remarks on the subjects likely to occupy the attention of law reformers for the next few months. They are not to be understood, in the ensuing paragraphs, as in any way binding down or anticipating the opinion of the society; they have merely endeavoured to sketch the probable operations of the session, and where they have expressed themselves more positively they have done so in the full confidence that their opinions have already received the assent of those whom they represent here.

"*Minister of Justice.*—The subject which must first and most prominently command attention is that of the necessity that exists, and is now felt more and more every year, for establishing a separate department of justice, charged not only with the due administration of our law, but with its constant revision and amendment. The society has frequently called attention to the urgent need for establishing such a department, and to the best mode of meeting the exigency; the council trust that they will continue to press the subject on government, the legislature, and the public at large, and that above all every effort will be made to support Mr. Napier, when he renews his motion in the House of Commons, for the appointment of a



Minister of Justice, as by a recent letter to the secretary he has expressed his intention of doing, at the earliest opportunity, after the re-assembling of Parliament.

*"Judicial Statistics."*—One of the earliest, as well as one of the most important, results which would probably follow the creation of a department of justice, would be the collection, in a proper form, and at regular intervals, of the judicial statistics of all our courts. A report was presented on this subject during the last session, and the president of the society introduced a bill into the House of Lords to carry out the object; that bill will, no doubt, be again brought before the Legislature, and the council think it very advisable that the committee, who have already reported, should continue their labours, and work out, as far as possible, all the details of the subject.

*"Public Prosecutor."*—The long-debated question of appointing a public prosecutor would also receive its solution by the establishment of a minister of justice. Some recent events have demonstrated most forcibly the advantage that would arise from the employment of such an officer, and it is hardly possible that the Legislature can long avoid dealing with the subject. Many different modes of practically attaining the object sought, have been brought before the public; of which not the least feasible would seem to be that of employing local officers, who would be charged with the preparation of the case previous to its being brought into court, without interfering with the independent employment of the bar.

*"Legal Education."*—There is another subject, closely connected with the efficient administration of the bar, on which Mr. Napier has addressed the secretary. It will be remembered that some years since this society felt bound to make a public protest against the neglect of legal education in the Inns of Court, and the absence of any test of competency for those called to the bar. In consequence of this remonstrance, Mr. Napier brought the subject before the House of Commons, and moved an address to the Crown for a royal commission, to inquire into the institution and management of the Inns of Court. A commission was shortly afterwards issued, naming a Vice-Chancellor, a common law judge, the Attorney and Solicitor Generals, and other learned and eminent persons, to make the necessary inquiries, and to report thereupon. The labours of these commissioners were brought to a close more than a twelvemonth since by the publication of a very able and impartial report, signed by the commission unanimously. It recommended the establishment of a law university, composed of the four Inns of Court, and sketched out a plan for that purpose; and it also recommended that no person should in future be called to the bar till he had given a proof of his competency by passing a proper examination. Early in the past session the society referred this report to a special committee, with instructions to take any steps that might appear advisable to ensure the adoption of the recommendations contained in it; but the committee, after due deliberation, considered it most advisable to wait for any steps which the benchers of the Inns might see fit to take in the matter. As the majority of the commissioners occupied the position of benchers, being, moreover, not the least distinguished of their body, the expectation that some measures would be taken in due course of time by these learned persons to carry out the recommendations of their colleagues, was no doubt a natural one. It appears, however, to have been unfounded, as no

alteration has been made in the government of the Inns, or in the requirements for a call to the bar; and the council have indeed heard, with much concern, that the benchers of one of the four Inns have formally decided, after due deliberation, that they will not carry the recommendations of the commissioners into effect. The time would therefore seem to have arrived when this society, with whom the movement for inquiry into the present state of legal education originated, is bound to take some energetic steps in furtherance of the views which it has long and consistently advocated. Mr. Napier, it appears, entertains the same opinion, and is anxious that the society should direct the preparation of a bill embodying the recommendations of the commissioners, which he undertakes to lay on the table of the House of Commons at the earliest opportunity after its re-assembling. The council are very desirous that the society should avail itself of this offer, and would recommend that the committee appointed last session to consider the report should be requested to prepare a bill establishing a compulsory examination for students prior to their being called to the bar. The council are inclined to think that the bill should be confined to this one object, and that no interference with the internal government of the Inns of Court should at present be attempted. The need for some test of efficiency for the bar is very urgent, and the public policy of such a test is so obvious that little difficulty will probably be experienced in carrying a measure for its attainment. The fact that during the last twenty years a large number of offices have been created by act of Parliament, the sole qualification for which is the degree of barrister, has long taken this question out of the region of mere professional opinion, and made it a matter of public interest and safety. It frequently happens that the individuals appointed to some of these offices are barristers who have never passed through that test of actual practice which is no doubt a guarantee for the interests of suitors in our courts; there is in such cases no certainty of their possessing any competent knowledge at all; and it certainly appears extremely anomalous that while civil service examinations are being instituted for the clerkships in the different departments of state, no kind of test should be exacted from the candidates for a large number of public offices at least as important in their character.

*"Criminal Law."*—The subject of criminal law, or, to speak more correctly, the range of subjects embraced under that head, are receiving from the public and the Legislature a continually increasing attention. The rapid success of the National Reformatory Union—a society happily connected in some degree with our own—has shown the deep feeling that exists in favour of reformation, as opposed to deterrent punishment, when applied to youthful offenders. It was not possible that the system of juvenile reformatories could be carried out without giving rise to the wider question of the treatment of the whole of our criminal population. Lord Brougham, in a paper read at the Bristol meeting of the National Reformatory Union, pointed out the broad principle of the inefficiency of simply penal legislation as the only safe and philosophical one on which to proceed. Taking this principle as the ground-work for improvement in the administration of our criminal law, and as the guide for future legislation, it would appear that there are three distinct portions into which the answer to that grave question—how are we to diminish the numbers of our criminal population?—must necessarily resolve itself. In the

first place, every effort should be made, by proper means of prevention, to cut off the future supply of criminals. This may be done in some measure by a general improvement of our law, by abolishing as far as possible artificial offences—those statutory crimes which are not *mala in se*—and by doing away with the restrictions on combination of capital, which tend to keep the labouring classes poor. But the prevention of crime can only be accomplished, to any great extent, by the establishment of a system of national education, more especially of industrial education, by which the quick faculties of those who now supply the ranks of our criminal classes may be turned to useful purposes, and they may be at once taught the means of obtaining an honest livelihood, and the rights attaching to individual property. The subject of general education is not, indeed, within the purview of this society, but the council would direct attention to the admirable results which have followed from the enactment of Mr. Dunlop's act in Scotland, and would ask for the opinion of the society, whether a somewhat similar measure might not be introduced into this part of the kingdom? By Mr. Dunlop's act vagrant and destitute children may be sent by a magistrate to the Trading Industrial Schools, now established in all the principal towns of Scotland, and an order be made on their parents or the locality for the amount of their maintenance. When it is considered that this class of children are the raw material out of which our criminal population is chiefly manufactured, it is evident that any legislation which would diminish their number would tend in a very great degree to diminish the amount of crime. In the second place, a means of reformation should be universally provided for those young offenders (though it may be hoped comparatively few in number) who would always remain to be dealt with. This portion of the subject may be safely left in the hands of the National Reformatory Union, which has already done so much, and will no doubt go on unceasingly to the full accomplishment of its work. The only suggestion which the council would offer on this head of the subject is, that it might not be disadvantageous to consolidate the various acts relating to reformatories into a single statute. The preparation of such a bill, if decided on by the Criminal Law Committee, might be very aptly undertaken in conjunction with the Committee of the National Reformatory Union, if they would lend their valuable aid for that purpose.

"In the third place, it is necessary to deal after a more regular and systematic plan than has yet been attempted, with our adult criminals. The council trust that the society, in any deliberation which it may hold on this topic, will not forget the broad line which it is necessary to draw between casual and habitual offenders. With respect to the former, it may become a question whether it would not tend to the diminution of their numbers, and to the more satisfactory administration of the law, if a system of fines were substituted for imprisonment in many of the more trivial cases which are now visited with the latter punishment. With regard to the latter, it is not going too far to say that the uselessness, if not the absolute mischief, of short imprisonments is beginning to be universally recognised; and that the public mind is rapidly becoming ripe for such a change in our criminal law as will at once send the proved habitual offender (whatever the exact offence of which he is ultimately convicted may be) to a very long term of imprisonment, which shall be

capable of being shortened by his own steps towards real reformation.

"The council would express their hope that the whole of this range of important subjects, including that of capital punishment, on which three valuable papers have already been read, may be taken up by the Criminal Law Committee, and that the society may receive from them during the ensuing session some reports upon them.

"*Criminal Breaches of Trust.*—Connected with this subject is that of criminal breaches of trust, which it will, it is hoped, be pushed on the attention of the Legislature. A committee of the society put forward during the last session a plan which was thought calculated to afford a satisfactory solution of the question; but the society will no doubt be happy to give its support to any measure which may seem likely to put some check on the fraudulent transactions now carried on well-nigh with impunity.

"*Consolidation of the Statute Law.*—The council cannot doubt that the important subject of the consolidation of our statute book will meet with the earnest attention it deserves at the hands of the society. A certain amount of work is no doubt being done, and a number of consolidating bills will probably be brought before Parliament in its next session; but the society will feel that this is not the whole of the work to be done, nor indeed its first and most necessary portion. It is only by a proper previous expurgation of the statute book that the work of consolidation can ever be taken up with any hopes of speedy success; and it is to be hoped that the plan of operations put forward last session by the society will be vigorously pressed on the Government with a view to its immediate adoption. The plan of appointing an officer merely to revise bills as they pass through Parliament, which has been mooted of late (however valuable for the one particular object to which it is directed), cannot be considered as in any way adequate to meet the requirements of the case. What is wanted is a properly constituted board, headed by a responsible and active head, who would devote their whole time to the work, and grapple with the numerous difficulties which beset the first steps towards what ought always to be kept in view as the ultimate object—the arrangement of the whole body of our laws in one compendious code.

"*Ecclesiastical courts.*—The council on the subject of the Ecclesiastical Courts would only express their hope that another effort will be made during the ensuing session of Parliament to remedy the evils which have so long been complained of, but which so long have remained unredressed.

"*Married women's property.*—A bill has been prepared during the recess by one of our members to carry out the view of the society in reference to the question of the property of married women; this bill will receive the earnest attention of the council, and they trust that some solution of this important but difficult subject will be shortly arrived at.

"*Commercial law.*—On the subject of commercial law the council have but few remarks to offer. The recent enactment of that excellent measure, the Joint Stock Companies Act, has greatly facilitated the combination of capital, and has simplified our law on that head in a very satisfactory way. The bill which was introduced last session by the Government to abolish the consequences of the judgment in "*Waugh and Carver*," did not pass through Parliament, and individual traders are thus left at a

disadvantage in their competition with small companies. This is a state of things which will doubtless, at no distant time, be remedied. The council are glad to find that the society will probably have the advantage of again hearing the question of partnership law discussed by a gentleman practically acquainted with mercantile operations; and they would suggest that this opportunity might be taken to consider the principles on which the whole system of legislation respecting partnership ought to be based.

*"Transfer of Land.*—Not less essential to the prosperity of the community than the facile combination of capital is the cheap and easy transfer of landed property. The royal commission appointed to inquire into that important subject have not yet reported; but it is generally understood that they have fixed on a scheme which may be embodied in a legislative measure; and whenever the details of this plan are made public, they will doubtless receive the most earnest attention of the society.

*"Law Reporting.*—In regard to matters of less wide import, the council are able to state that a report on the subject of law reporting will shortly be made to the society by the committee appointed some time since for that purpose. The discussion on it will probably be taken at an early day.

*"Lex Loc.*—A report will also shortly appear on an interesting subject; that of the necessity of a *lex loci* for British India. A number of able men, peculiarly well qualified to give an opinion on this topic, are considering it in the committee appointed at the end of last session; and though the council will not anticipate their decision, it is believed that they will report in favour—at any rate in a great degree—of the recommendations of the minority of the late Indian Commission.

"The council would, in conclusion, state that as there never was a time when the society was more flourishing and more influential, so it now peculiarly rests on the members generally to maintain its reputation and extend its strength by giving to its operations their united and vigorous support. It may be a matter for consideration whether a closer union, at least at certain periods, with those who are prosecuting action and inquiry on other branches of that great science of social economics of which law amendment forms one of the most valuable parts, might not conduce to a larger appreciation of our views by the bulk of the nation, and a more rapid accomplishment of the objects at which we aim. Such a connexion we have already formed in some degree with the National Reformatory Union, and the happy results of that step would seem to point to the pursuance of a similar course with other kindred societies. In any such union it would of course be essential to keep our own Government independent, and our own views distinct."

## LAW OF COSTS.

WHERE PRINTED BILL NOT FILED PURSUANT TO UNDERTAKING.

A WRITTEN copy of a bill was filed on January 19, 1856, upon an undertaking to file a printed copy within the fourteen days limited by the 15 & 16 Vict. c. 86, s. 6. The fourteen days expired on Feb. 2, and no printed copy having been filed, the Clerk of Records and Writs took the written copy off the file under Order 3 of August, 7, 1852. It ap-

peared that this neglect had occurred in consequence of the illness of one of the plaintiff's solicitors, and through the omission of the managing clerk. On the hearing of the motion for an injunction on January 31, a printed copy of the bill was provided for the use of the court, and supplied to the defendant's solicitors, and also to counsel.

The Master of the Rolls said: "I have been considering the case, and I think if it is a mere slip, the plaintiff ought, on payment of the costs, to be allowed to amend it. If I did not allow this, the only consequence would be this: that the plaintiff would put the same bill on the file to-morrow, renew the motion for an injunction the day after, and re-swear all the affidavits. What struck me was this: the bill was really printed, and copies were in court at the time the motion was heard. The only question is, whether the general order of the court is imperative on me, so that I cannot order the bill to be filed *non pro tunc*."

An order was accordingly made that the written bill should be restored to the file, and that a printed copy should be received and filed as of February 2, and that the plaintiff should pay to the defendants their costs of the application, but no costs of the suit to be taxed and paid.

*Ferrand v. Corporation of Bradford*, 21 Beav. 422.

## BUSINESS OF THE COURTS.

### EXCHEQUER CHAMBER—SITTINGS IN ERROR.

The Court will sit and hear arguments in error from the Court of Queen's Bench on Wednesday the 12th, and Thursday the 13th inst., in error from the Court of Common Pleas on Wednesday the 26th inst.; in error from the Court of Exchequer on Wednesday the 26th; Thursday the 27th; Friday the 28th; and Saturday the 29th inst.

### ATTENDANCE OF JURYMEN.

In the Court of Exchequer on the 4th inst., Mr. Baron Martin stated that he should have the list of jurymen called over at 10 o'clock in the morning, and that he should expect them all to be in attendance, or else to give some very good excuse for their absence.

### CENTRAL CRIMINAL COURT SITTINGS.

The following days have been appointed for holding the sessions for the ensuing year:

1856.

Monday, November 24 | Monday, December 15

1857.

Monday, January 5	Monday, June 15
" February 2	" July 6
" March 2	" August 17
" April 6	" September 14
" May 11	" October 26

### EXCHEQUER OF PLEAS.

The Special Paper will be taken on Tuesday, 11th November inst., instead of Wednesday, the 12th, after the motions.

## NOTES OF THE WEEK.

## LAW APPOINTMENTS.

Mr. *Serjeant Wells* has been appointed Recorder of Bedford, in the room of T. B. Burcham, Esq., appointed one of the metropolitan police magistrates. Mr. Wells was called to the bar by the Honourable Society of the Middle Temple on 29th January, 1841, and went the Norfolk Circuit.

Mr. *Jonathan Metcalf* has been appointed Sheriff Clerk of Berwickshire.

Sir Wm. *Westbrooke Burton*, puisne judge of the Supreme Court at Madras is, we understand, about to retire. Sir Wm. Burton commenced his career in the royal navy, but at the conclusion of the war in 1815, entered himself as a student at the Temple, and was called to the bar. He was subsequently appointed a judge at the Cape of Good Hope, and thence transferred to Madras. The retiring pension is £1,200 a year, and the salary of the puisne judgeship £5,000 a year.

Mr. *J. B. Winterbotham* has been appointed Town Clerk of Tewkesbury.

Mr. *Charles William Moore* has been appointed Commissioner, Mr. *W. C. Green*, Treasurer, and Mr. *Samuel Philpot Brookes*, Clerk to the Local Board of Health of Tewkesbury.

Mr. *Herbert Jackson* has been appointed to a Clerkship in the Registrar's Office in Chancery.

*J. G. S. Smith*, Esq., Judge of the Lincolnshire

County Court has been appointed to the Commission of the Peace for the City of Lincoln.

The Queen has been pleased to appoint *Benjamin Chilly Campbell Pine*, Esq., barrister-at-law, to be Governor and Commander-in-Chief in and over her Majesty's forts and settlements and their dependencies, on the gold coast.—From the *London Gazette* of 4th November.

Mr. *Francis Cobb* and Mr. *William Price Moore* were, on the 5th inst., admitted proctors of the High Court of Admiralty and Arches Court.

## IRISH COURT OF APPEAL IN CHANCERY.

The new Court of Appeal will not sit until Hilary Term next, the act not coming into operation until January 1, 1857. The court will hear all appeals from the Master of the Rolls, and the Encumbered Estates Court, and will be composed of the Chancellor, the Lords Justices of Appeal, and any of the Common Law Judges whom the Lord Chancellor may call upon to sit with them.

## WINTER CIRCUITS.

It is expected that there will be a winter assize for general gaol delivery after Michaelmas Term.

The appeals from the decisions of the Vice-Chancellor *Stuart* will be heard by the Lord Chancellor.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Master of the Rolls.

*Bank of Australasia v. Prince.* Nov. 4, 1856.

BILL OF EXCHANGE—FORGED SIGNATURE—  
ACTION AT LAW—INJUNCTION.

*An injunction was granted to restrain an action at law by the indorsee of a bill of exchange against the payers, where the party, a married woman, to whom the bill was payable, stated her signature thereto to be a forgery, and the payers were directed to hold the money until it was determined who was the proper person to receive payment.*

THIS was a motion to restrain the defendant from further proceeding with an action at law to recover the amount of a bill on the plaintiffs for £196. It appeared that the defendant had obtained the bill, which was in favour of a Mrs. Dawson, to be discounted for Mr. Dawson, by adding his own indorsement. The plaintiffs required proof of the signature of Mrs. Dawson before payment, and on her declaring that the signature on the bill purporting to be her's was forged, the plaintiffs refused to pay the amount without being protected.

*Speed* in support; *Follett, Simpson, and Cotton* for the other parties.

The Master of the Rolls granted the motion—the plaintiffs to retain the money until the proper party to receive the same was ascertained.

## Vice-Chancellor Wigram.

*Lovett v. Lovett.* Nov. 4, 1856.

WILL—SUIT TO ESTABLISH—ISSUE DEVISAVIT VEL NON.

*In a suit to establish a will as against parties*

*claiming under a prior will and the heir-at-law: Held, that an issue devisavit vel non would be directed at the instance of such claimants where they questioned the later will on the ground of undue influence and that it was made while the testatrix was incompetent.*

THIS was a motion for a decree to establish the will of the testatrix, Mrs. Lovett, as against the Rev. Robert Lovett and his son, who claimed under a prior will, and also as against the heir-at-law. It appeared that probate of the later will had been obtained, although opposed by the defendants on the ground of undue influence and that it was obtained when the testatrix was incompetent.

*Rolt and G. Lake Russell* for the plaintiff; *Willcock, Prendergast, Horsey, and Field* for other parties in the same interest in support; *James and Jessel* for the defendants asked for an issue *devisavit vel non*; *Hetherington* for the heir-at-law.

The Vice-Chancellor said that although on the authority of *Boyes v. Roseborough* 1 Kay and J. 125, the bill was maintainable, it would be going too far to establish this will without giving the parties claiming under the previous one an opportunity of trying their right at law, and an issue was accordingly directed.

## Court of Queen's Bench.

*Thomas v. Stutterheim.* Nov. 8, 1856.

COMMON LAW PROCEDURE ACT, 1854—COMMISSION TO EXAMINE WITNESS—PRACTICE.

*Held, that the application for the issue of a commission to examine a witness at the point of death,*

and whose evidence was necessary to the defendant's case, under the 17 & 18 Vict. c. 125, s. 46, should be by summons at chambers, and not by motion in court.

This was a motion for the issue of a commission to examine Lieutenant-Colonel Poër, who was very dangerously ill, and whose evidence was necessary for the defendant's case.

By the 17 & 18 Vict. c. 125, s. 46, it is enacted that "Upon the hearing of any motion or summons it shall be lawful for the court or judge, at their or his discretion, and upon such terms as they or he shall think reasonable, from time to time to order such documents as they or he may think fit to be produced, and such witnesses as they or he may think necessary to appear, and be examined *vidæ voce* either before such court or judge, or before the master, and upon hearing such evidence, or reading the report of such master, to make such rule or order as may be just."

*Needham* in support.

The Court said that the application should be by summons before a judge at chambers, and refused the motion accordingly.

*In re John Williams Knipe.* Nov. 4, 1856.

ATTORNEY—STRIKING OFF ROLL—SHAM ACTION—REFERENCE TO MASTER.

*A rule nisi to strike an attorney off the rolls for bringing a sham action for a fraudulent purpose, and seizing an insolvent's effects, under a pretended judgment in such action, was referred to the Master to report on, with liberty to call for further affidavits, or to examine witnesses *vidæ voce*.*

This was a rule nisi to strike Mr. John Williams Knipe, an attorney practising at Worcester, off the rolls, for bringing a sham action at the suit of one Houghton Perkins against William Beck, for a fraudulent purpose, and seizing the latter's effects, under a pretended judgment obtained in that action, and also carrying off part of those effects himself.

Gray showed cause against the rule, which was supported by Keating.

*H. J. Hodgson* for the Incorporated Law Society.

Lord Campbell, C.J., said: "Mr. Gray, it was our duty to give you a full opportunity to explain the circumstances of the case, and if we had thought you had done so, we should have pleasure in discharging the rule. We give no judgment, but you now having fully argued it, we think that there is reason for referring it to the Master."

The matter was accordingly referred to the Master to report thereon, with liberty to call for further affidavits, or to examine witnesses *vidæ voce*.

## Queen's Bench Practice Court.

*Ex parte Francis Norton.* Nov. 3, 1856.

ARTICLED CLERK—STAMPING ARTICLES AFTER SIX MONTHS—COMPUTING SERVICE.

*Circumstances under which the Court directed the service of an articulated clerk to be reckoned to commence and be computed from the date of the original articles, in August, 1844, and for the discharge of subsequent articles with the consent of the second master.*

It appeared that the applicant, Mr. Francis Norton, was articulated in August, 1844, to his father, a practising attorney in the city of London, but that owing to pecuniary pressure his articles were not stamped within the six months, and in December, 1853, the applicant's father died, without having ever stamped the articles. In April, 1854, the applicant memorialised the Lords of the Treasury for leave to stamp the articles, but while it was under consideration Mr. Henry Braddon, of 6, Gray's-inn-place, consented to take him as his articulated clerk, and on May 10, 1854, the articles were executed on unstamped paper. The Lords of the Treasury afterwards declined to interfere, and the applicant paid the stamp duty of £80, with £10 penalty. By an act passed last session (19 & 20 Vict. c. 81)\* the Lords of the Treasury are empowered to direct the stamp duty to be affixed to articles not stamped within the time limited, and they had accordingly ordered the old articles to be stamped upon payment of the higher duty of £120, together with a penalty of £20, deducting the £80 paid on the subsequent articles.

This motion was now made that the service of Mr. Norton should be reckoned to commence and be computed from the date of the execution of the original articles, and to discharge him from his articles to Mr. Braddon, who had consented to cancel the same.

*M. Chambers* in support.

The Court granted the application.

\* The 19 & 20 Vict. c. 81, s. 3, is as follows:—"Whereas by the 7 Geo. 4, c. 44, it is enacted that it shall not be lawful for the Commissioners of Stamps or any of their officers to stamp, under any pretence whatever, after the expiration of six months from the date thereof, any vellum, parchment, or paper upon which shall be engrossed, printed, or written any articles of clerkship, contract, indenture, or other instrument which any person shall become bound to serve as a clerk or apprentice, in order to his admission as a solicitor, attorney, proctor, writer to the signet, agent, or procurator in any of the courts of law or equity, or the High Court of Admiralty, or any ecclesiastical court, or the Court of Session, Justiciary, Exchequer, Commission of Teinds, or the Commissary Court, or any inferior court in Great Britain: Be it enacted, that it shall be lawful for the Commissioners of Inland Revenue, notwithstanding the said last-mentioned act, in any case where they shall be directed so to do by the Commissioners of her Majesty's Treasury, to stamp any such instruments as last mentioned, upon payment of the duty chargeable thereon at the date thereof, and of such further sum as hereinafter specified by way of penalty, and in lieu of all other penalties—that is to say, as to any instrument bearing date and executed before August 1, 1853, the sum of £20," &c.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### House of Lords' Appeals.

LUNATIC.

*Bill against committee—Answer—Revivor—Evidence.*—A, B., and C. were committees of a lunatic.

To a bill filed against the lunatic and themselves, as committees, they put in an answer stating certain facts. That cause went to issue, and witnesses were examined. The lunatic died; A. and the wives of B. and C., who were relatives, obtained letters of

administration to her estate as her next of kin. The plaintiff in the original suit then filed a bill of revivor against A., the two wives and their husbands, merely praying for a revival of the suit. The ordinary order was made. The defendants to the bill of revivor put in an answer, in which they craved to have the full benefit of the answer to the original bill; there was no replication to this answer. The original answer contained statements which at the hearing were admitted to be read against the defendants.

*Held*, that under the circumstances of this case these statements were properly admitted in evidence.

Is an answer by committees binding upon the estate of the lunatic?

Is it binding on them in any other character?

*Stanton v. Percival*, 5 H. of L. 257.

#### MISDIRECTION.

See *Charity*, p. 455.

#### NEGLIGENCE.

See *Charity*, p. 455.

#### PATENT.

*For use of known substance—Infringement.*

Where a patent has been obtained for the use of a known substance, described by its specific name, and it is afterwards discovered that the use of two other and equally known substances will produce the same effect, though the evidence of scientific men may go to show that the two substances become in the act of so using them, the one substance described in the patent, their use will not constitute an infringement of the patent.

A. obtained a patent for an improved mode of manufacturing cast steel by the use of "carburet of manganese." This substance was well known but was very expensive. At the time the patent was taken out, it was known that carburet of manganese might be obtained from the combination of two inexpensive articles, oxide of manganese and coal tar. Some little time after the patent had been in existence, it was found that if oxide of manganese and coal tar were put into the melting pot with the metal, cast steel would be produced equal to that which was produced by the aid of the "carburet of manganese." Some of the witnesses said that the carburet was produced in the melting pot at the instant of the fusion of all the ingredients therein contained.

*Held*, that the use of these two articles in that manner was not an infringement of the patent. *Unwin v. Heath*, 5 H. of L. 505.

#### PLEA.

See *Freight*, p. 456.

#### POSTEA.

See *Venire de novo*.

#### PUBLIC COMPANY.

See *Injunction*, p. 456.

#### RAILWAY COMPANY.

*Purchase of land—Misapplication of funds—Specific performance—Defect in title.*—Where an act creating a railway company, or giving new powers to an existing company, authorises the purchase of lands for extraordinary purposes, a person who agrees to sell his land is not bound to see that it is strictly required for such purposes; if he does not know of any intention to misapply the funds of the

company, but acts *bond fide* in the matter, he may enforce performance of the contract.

Promoters of a company proposing to make a line of railway, or persons standing in a similar situation as directors of an existing company, applying to Parliament for authority to make a new line, may lawfully enter into a contract for land that will be necessary for the proposed line should the bill pass, and when it has passed such contract will be valid, and may be enforced. The mere want of legal power to make the contract at the moment of entering into it will not affect its validity afterwards. *Secus*, where the act is itself illegal, and Parliament is to be asked to legalise it.

Where a contract for the purchase of land is made by the projectors of a proposed line of railway, though an action at law may be maintained upon the contract, a court of equity will not, simply on that account, refuse its interference to compel specific performance.

In a contract for the sale of land for the purposes of a projected railway, the vendor was described as having, as far as regarded one part of the land, no more than a mere life estate, and the projectors of the railway undertook to obtain from Parliament powers to enable him to make a good title.

*Held*, that where they did not fulfil this stipulation, or but for their own default, the title might have been perfected, they could not set up his deficiency of title as an answer to a bill for specific performance.

But (per Lord Campbell), though an individual vendee may consent to accept a defective title, it is doubtful whether the directors of a railway company, acting on behalf of the proprietors can do so.

*Semble*, that where the directors of a railway company, wanting part of a property, purchase more of it than is required, though that may become a question between them and the shareholders, they cannot on that account avoid the contract with the seller. *Eastern Counties Railway Company v. Hawkes*, 5 H. of L. 331.

#### RECORD.

See *Venire de novo*.

#### REPLICATION.

See *Revivor*.

#### REVIVOR.

*Replication to answer—Original answer.*—Where there is no replication to the answer to a bill of revivor is a plaintiff bound, if he relies on the original answer, to take it as absolutely true in all particulars?

Is a replication necessary to an answer to a mere bill of revivor? *Stanton v. Percival*, 5 H. of L. 257.

And see *Lunatic*.

#### SCL. FA.

See *Banking Company*, p. 454.

#### SECOND TRIAL.

See *Venire de novo*.

#### SERVICE OF NOTICE.

See *Injunction*, p. 456.

#### SPECIFIC PERFORMANCE.

See *Railway Company*.

#### TRANSFER OF SHARES.

See *Banking Company*, p. 454.

## TRUSTEE.

*Investment—Transfer of, in equity.*—Where one person entrusted with sums of money to invest for the benefit of another has signed an agreement admitting an amount due on investments made, equity will compel their transfer. *Stanton v. Percival*, 5 H. of L. 257.

And see *Charity*, p. 455.

## USURY.

*Bill of exchange—Warrant of attorney—Reforming decree.*—Where money is advanced at usurious interest on the security of bills of exchange, having three months to run, such advance is protected and the bills themselves are valid under the 3 & 4 Will. 4. c. 98, s. 7, and though a warrant of attorney to confess judgment may be taken at the same moment, on which judgment is the next day entered up and registered under 1 & 2 Vict. c. 110, so as to become a charge on the lands of the debtor, the transaction is not thereby rendered invalid under the proviso of the 1st section of the 2 & 3 Vict. c. 37.

The 2 & 3 Vict. c. 37, does not repeal the 3 & 4 Will. c. 98.

*Seemle*, that a warrant of attorney to confess judgment, though by such judgment the lands of the debtor may be charged, is not a charge upon land.

H. had received from L. money advanced on the security of bills of exchange. In Oct. 1843, he wanted a further advance, which L. after inquiring into the value of his real estate, consented to make, on condition that three months' bills should be given for the amount (usurious interest included), and that a warrant of attorney to confess judgment which L. should be at liberty to enter up immediately, should also be executed. All this was done, and judgment was entered up on the following day, and the judgment registered. The bills given in Oct. 1843, were not paid when they became due in Jan. 1844, and others were then substituted for them. These last were also dishonoured. A sale of H.'s estate took place, under a mortgage, executed to a prior creditor, who received more than would satisfy his claim.

*Held*, that L. was entitled to maintain a bill against him to pay over so much of the surplus in his hands as would satisfy L.'s judgment.

This House does not reform a decree of the court below. *Lane v. Horlock*, 5 H. of L. 580.

## VENIRE DE NOVO.

*Bill of exceptions—Postea—Record—Second trial.*—On the trial, in Dublin, of an action between A. and B., the judge gave certain directions to the jury, to which A. objected; he tendered a bill of exceptions, which (according to the provisions of the Irish statute, 28 Geo. 3, c. 31), was duly signed by the judge, and was afterwards argued in the court in which the action was brought. That court adopted the exceptions, and ordered a *venire de novo*, and a new trial took place, the court deciding that such was the proper course. B. did not appear at the second trial. On the first trial the verdict had been given for B.; on the second it was given for A., and judgment was pronounced thereon in his favour; B. brought a writ of error, and then, finding that the *postea* and all the proceedings relating to the first trial had been struck out of the record, which from the first *venire* went on with formal continuance only to the second trial and verdict, he applied to

the court in which the action was brought to have these omissions supplied. That court refused to supply them.

*Held*, that this mode of proceeding was erroneous, and this House ordered the court in which the action was brought to amend the record by entering on the plea roll the first trial, the exceptions, and the award of a *venire de novo*.

*Held*, also, that B. was not bound to appear at the second trial.

*Bank of Ireland v. Evans' Charity Trustees*, 5 H. of L. 889.

## WARRANT OF ATTORNEY.

See *Bond*, p. 455; *Usury*.

## WILL.

*Construction—Copyholds—Annuities—Interest—Costs.*—A testator was in 1792 possessed of freehold lands, and of an equitable fee in a copyhold estate. He made a will by which he subjected the whole of his real estate in aid of his personality to the payment of his debts, and subject thereto, he gave all his "messuages, tenements, lands, hereditaments, and premises, with the buildings, mines, &c." thereon and therein, over which he had a disposing power, to trustees for 500 years, out of the rents, &c., or by assignment, &c., of the term to raise money to pay his debts, legacies, and, after payment thereof to apply the rents, &c., or the remainder of the estate, to the use of his grandson C. W. C., on his attaining twenty-three, and to raise £1,000 to pay to his other grandson R. C. on his attaining twenty-three. And in order that these two grandsons might be properly educated, the testator directed that the sum of £200, until C. W. C. should attain twenty-three, and £100 afterwards, and till R. C. should attain twenty-three, should be raised for that purpose. By the custom of the manor the copyholds which the testator possessed, would descend to his customary heir or heirs, the tenure being gavelkind. The testator had not made any surrender of them to the use of the will. When he died in 1799, his only daughter (the mother of C. W. C. and R. C.) was his customary heir, and on her death, they became her customary heirs.

*Held*, that the testator's copyhold interest did not pass by the will, but descended to his customary heir.

The annuities created for the maintenance of the grandsons, had fallen into arrear.

*Held*, that they were charged on the real estate itself, and not merely on the annual rents and profits.

*Held*, also, that the annuities did not carry interest.

The suit to administer the will was instituted in 1800; a great many delays had taken place; it is a rule of equity to give interest, where there has been unnecessary and vexatious delays; but as the House could not attribute the delays in this case to any particular party in the suit, no interest was allowed.

As part of the decree of the court below was sustained, and part was reversed, no costs were given.

A party is not prevented from appealing against a decree because he did not except to the master's report on which it is founded. *Torre v. Bruce*, 5 H. of L. 555, 565.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, NOVEMBER 15, 1856.

### THE PROPOSED LAW UNIVERSITY.

#### LEGAL EDUCATION OF THE SEVERAL BRANCHES OF THE PROFESSION.

THERE are evident signs of an intention to bring before Parliament not only the recommendations contained in the Report of the Inns of Court and Chancery Commissioners, but the general subject of legal education. We therefore deem it not inappropriate to resume the consideration of the claims and interests of the second and larger branch of the profession.

We observe by the Annual Report of the Law Amendment Society (which we submitted to our readers last week), that this subject is somewhat fully dwelt upon.\* It is scarcely necessary to say that, although many eminent solicitors are members of the Law Amendment Society, the preponderance in numbers and influence rests with the bar. The Report, however, is ably written, and far less objectionable than many of the productions of the law reformers. It will be recollected that the commissioners recommended the establishment of a Law University composed of the four Inns of Court; and that no person should in future be called to the bar till he had given proof of his competency by passing a proper examination.

The Council of the Law Amendment Society propose only to prepare a bill for establishing a compulsory examination for students prior to their being called to the bar. They think the bill should be confined to this one object, and that no interference with the internal government of the inns of court should at present be attempted.

It is well observed in the Report that during the last twenty years a large number of offices have been created by act of Parliament, the sole qualification for which is the degree of barrister. Some of the individuals appointed to these offices, it is remarked, have never passed through any test of actual practice. There is consequently no certainty of their possessing any competent knowledge whatever. While civil service examinations are instituted for the clerkships in the different departments of the State, no kind of test is exacted from

the candidates for a large number of public offices, which, to say the least, are of an equally important character with that of Government clerkships.

It is observable that, although the Royal Commission directed an inquiry into the Inns of Chancery as well as the Inns of Court, the recommendations of the commissioners are limited to the greater inns. Now it may reasonably be inferred that as the Inns of Chancery consist almost exclusively of attorneys and solicitors, it was intended that any improvements in legal education should comprehend both branches of the profession; and, consequently, that if the Legislature should adopt the suggestion of the commissioners in regard to the establishment of a Law University, the whole profession should be included. It has often been observed that the term "university" is scarcely applicable to a single science; and if it were so, that there should be a medical university. In either case, however, it is palpable to common sense that all the branches of the profession should be comprehended in the scheme; or otherwise the example of the medical profession should be followed in the legal, by constituting "colleges" for each branch, like the College of Physicians, the College of Surgeons, and the Society of Apothecaries.

There are differences of opinion amongst leading men as to the expediency of the attorneys contenting themselves with an incorporation of the whole body in a collegiate form, or seeking to be included in one general university. There will be an opportunity of fully discussing these questions when the subject comes before Parliament. We do not at present see that there can be any possible objection to the bill proposed by the Law Amendment Society for enforcing an examination of students at law before they are called to the bar. The statute relating to attorneys requires the judges to examine, "by such ways and means as they think proper," all persons applying to be admitted on the rolls of the superior courts, and authorises them to appoint examiners and fix the fees payable for such examination. This is a sufficient legislative precedent to warrant the introduction of the measure; and it is not improbable that when it comes before the House a select committee will be appointed to consider the

\* See p. 466, ante.



whole subject, and settle the provisions of a bill for the improvement of legal education in all its departments.

### CHANCERY AMENDMENT BILL.

By this bill it is proposed by the Lord Chancellor to amend the course of procedure in the High Court of Chancery as follows:—

1. This act shall commence and take effect from and after the 1st November, 185 , and may be recited and referred to as "The Chancery Amendment Act, 185 ."

2. In all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, it shall also have jurisdiction to award damages to the party injured, by way of compensation for the injury done, in addition to restraining by injunction the commission or continuance of such injury for the future, and such damages may be awarded whether the act complained of shall or shall not have been productive of profit or advantage to the wrongdoer.

3. No person who has obtained an injunction from the Court of Chancery against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, shall be entitled, without the leave of the court, to proceed at law against the party restrained by such injunction to recover damages in respect of any prior or subsequent breach of such covenant, contract, or agreement, or in respect of the commission or continuance of such wrongful act.

4. In all cases in which the Court of Chancery has jurisdiction to entertain an application for the specific performance of any covenant, contract, or agreement for a breach of which damages might be recovered at law, it shall also have jurisdiction to award damages to the party complaining by way of compensation for the loss sustained by the non-performance of such covenant, contract, or agreement up to the time of the performance thereof, in addition to ordering the specific performance of the same.

5. In all cases in which the Court of Chancery has jurisdiction to entertain an application for the specific performance of any covenant, contract, or agreement for a breach of which damages might be recovered at law, it shall also have jurisdiction to award damages to the party complaining by way of compensation for the loss sustained by the non-performance of such covenant, contract, or agreement, though the court may decline to order the specific performance of the same.

6. Any person claiming to be entitled to damages under the provisions of this act may require the court to adjudicate upon his right thereto, and if in the judgment of the court he shall be entitled to damages, the court shall proceed to direct the amount thereof to be assessed.

7. All damages to be awarded under this act shall be assessed by the court itself or by a jury upon an issue quantum damnificatus to be directed by the court for the purpose, and to be tried in like manner as other issues directed by the court are tried, or in such other manner as the court may direct.

8. The powers given by the act 15 & 16 Vic. c. 86, s. 63, of making general rules and orders, shall extend and apply to the mode in which such

damages are to be assessed, and the course of procedure of the court in relation thereto.

### CHANCERY REGISTRAR'S OFFICE BILL.

THIS Bill proposes to make further provision for the despatch of business in the Registrar's Office in the Court of Chancery, by the following enactments:—

1. It shall be lawful for the Lord Chancellor (in case it shall hereafter appear to be necessary), by writing under his hand, to appoint one additional registrar of the Court of Chancery, and from time to time fill up any vacancy in the said office; and the person to be appointed such additional registrar shall be the senior of the clerks to the registrars of the court for the time being to whom no sufficient objection, to the satisfaction of the Lord Chancellor, shall be made; and such additional registrar shall rank next after the junior of the registrars for the time being appointed under the 5 Vict. c. 5, and the 14 & 15 Vic. c. 83, and shall personally do and perform all the duties and have and enjoy all the rights and privileges belonging to the office of registrar, and shall be subject to the several provisions and penalties contained in or referred to by the said acts relating to the registrars of the said court, and be entitled to the like superannuation or retiring allowance as if he had been appointed registrar by or under the said acts: Provided always, that the acceptance of the office of additional registrar by such senior clerk for the time being shall be without prejudice to all his right of succession to the office of registrar under the said acts.

2. It shall be lawful for each of the registrars of the Court of Chancery, including the registrar, if any, to be appointed under this act, with the approbation of the Lord Chancellor, to appoint an assistant clerk, removable at pleasure, and from time to time to fill up any vacancy in the said office, such assistant clerk to perform such duties in the Registrar's Office as the registrars, with the approbation of the Lord Chancellor, shall direct.

3. No assistant clerk so appointed shall have any right of succession to the office of registrar or clerk to the registrars under the acts now in force regulating the Registrar's Office of the Court of Chancery.

4. From and after the passing of this act no person shall be eligible to be appointed a clerk to the registrars of the Court of Chancery under the acts now in force regulating the registrar's office of the same court who shall not have passed his examination for admission as an attorney or solicitor, or who shall be of the age of twenty-six years or upwards.

5. From and after the passing of this act, the appointment of a person to the office of a clerk to the registrars under the acts now in force regulating the Registrar's Office of the Court of Chancery shall be deemed and taken to be provisional only, and such appointment shall not become absolute unless the same shall be confirmed by the Lord Chancellor at or after the expiration of one year from the time of such provisional appointment.

6. Previously to the confirmation of the appointment of any person as clerk to the registrars, the Lord Chancellor shall require from the senior registrar and a majority of the other registrars a certificate in writing of their approval or disapproval of the conduct of such person during the time which shall have elapsed since his provisional appointment; and the Lord Chancellor may, at his discretion, con-

firm or annul such provisional appointment; and in case the Lord Chancellor shall annul the same, such appointment shall become altogether void; but nevertheless the clerk so appointed shall be entitled to receive his salary as such clerk up to the time of his appointment so becoming void.

7. Out of the fund placed to the credit of the Accountant General of the Court of Chancery, intitled "The Suitors' Fee Fund Account," there shall be paid to the additional registrar, if any, to be appointed under this act, from the date of his appointment, and also to each of the assistant clerks to be appointed under this act, the salaries or yearly sums following—that is to say, to the said additional registrar the salary or net yearly sum of £1250, and also so long as he shall be liable to the expenses of writing and copying the decrees and orders, and the minutes of the decrees and orders of the said court, the yearly sum of £100; and to each such assistant clerk such salary or yearly sum as the Lord Chancellor shall direct, not exceeding the sum of £120 a year in the first instance, but with power to increase the same to any sum not exceeding £200, but so that it shall not be increased in any one year by any greater amount than £20; all such salaries or yearly sums to be paid on the days and in the manner provided by the 15 & 16 Vict. c. 87, with respect to the payment of salaries payable out of the fund standing in the name of the Accountant General of the Court of Chancery to the account intitled "The Suitors' Fee Fund Account."

8. In the event of the appointment of an additional registrar under this act, there shall be paid to the twelfth clerk to the registrars for the time being, from the date of such appointment, out of the said fund standing in the name of the said Accountant General to the said account intitled "The Suitors' Fee Fund Account," the same salary or yearly sum as by the 5 Vict. c. 5, is directed to be paid to the seventh, eighth, ninth, and tenth clerks to the registrars, and payable on the days and in the manner provided by the 15 & 16 Vict.

9. In the construction of this act, the expression "Lord Chancellor" shall mean and include the Lord High Chancellor of Great Britain and the Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom for the time being.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

### THE NEW COUNTY COURT ACT.

Mr. Malcolm Kerr, in proceeding to notice the effect of the legislative measures of the last session, dwelt at some length in his first lecture on the effect of the recent County Court Act. Though we are precluded from reporting the whole of the learned gentleman's lecture, we think it will be useful to give a few notes, which we were able to take from his commentary on the 30th section. This is the section which has excited so much attention in the profession, and is so important to the suitors, relating to the costs in actions in the superior courts where judgments by default are obtained for sums not exceeding £20.

The 30th section of the County Court Amendment

Act deprives plaintiffs in the superior courts of costs in actions of contract under £20, when the defendant suffers judgment by default. This enactment has been construed by several of the judges at chambers, and they have arrived at the conclusion that the effect of it is merely to supply an omission in the earlier statutes relating to the county courts. These courts were created by the statute 9 & 10 Vic. c. 95. The 129th section of that act provided that where a verdict should be found for less than £20 in actions of contract, or £5 in an action of tort, the plaintiff should recover the amount of the verdict only, and no costs, unless his case came within the exceptions of the previous section (s. 128) of the same statute. The next statute affecting the county courts (the 13 & 14 Vic. c. 61) is called the *Extension Act*, because it extended the jurisdiction of these tribunals to £50. Section 11 of that statute virtually repealed, and also re-enacted, in somewhat different terms, section 129 of the first statute. It deprived plaintiffs of costs in the same way, except, firstly, in the cases *therein-after mentioned*; and secondly, in the case of a judgment by default.

The second exception, the case of a judgment by default, is what has been provided for by that section of the new statute, which has induced so many learned correspondents of our legal periodicals to rush into print. The result of the decision of the judges on this section is that if the plaintiff can bring himself within the exceptions of sect. 128 of the first county court act, or of those introduced by the subsequent statutes, he will be entitled to an order for his costs.

In order, then, to ascertain in what cases the plaintiff is entitled to this order, we must follow out the section of the Extension Act, and see what are the provisions now in force on the subject. The investigation may not be altogether valueless, nor is this investigation without importance to the solicitor in full practice; for now that something like remuneration has been accorded to those conducting suits in the county court, in cases where the claim exceeds £20, it may reasonably be anticipated, not only that a great many actions which formerly would have been brought in the courts of Westminster, will find their way to the local tribunals, but that questions will arise more frequently on the effect of the statute, depriving plaintiffs in the superior courts of their costs.

The act extending the jurisdiction of the county courts, or the Extension Act, as it is usually called, repealed in effect the 129th sect. of the first statute, and also deprived plaintiffs of costs in two sets of cases:—1st, in the cases *thereinafter mentioned*; 2nd, in the case of judgment by default. The second exception is now repealed, so that plaintiffs are deprived of costs by sect. 11 of the 13 & 14 Vict. c. 61, except in the "excepted cases."

The excepted cases of the statute 13 & 14 Vict. c. 61, are contained in sections 12 and 13. The effect of section 12 was that if the judge or presiding officer at the trial should certify on the back of the record that it appeared to him either that the cause of action was one for which an action could not be brought in the county court, or that there was sufficient cause for bringing the action in the superior court, the plaintiff should have judgment for his costs.

The 18th section provided that if the plaintiff could make it appear to the satisfaction of the court, or a judge at chambers, that the action was brought for a cause in which the superior court had concurrent

jurisdiction, within the 128th section of the first county court act, or that no *plaint* could have been entered in the county court, or that the action had been removed by *certiorari*, he should be entitled to his costs as in other cases.

Now, it will be observed that under section 12 the judge at the trial had a more extensive jurisdiction than the court or a judge at chambers, for he could certify for costs, if he thought there was *sufficient cause* for bringing the action in the superior courts. If he refused to certify, the plaintiff could still apply to the court or a judge at chambers for an order for his costs under the 13th section. The power of the judge at the trial was a *discretionary one*. He alone could judge and determine as to the sufficiency of the reasons for giving costs. The court or a judge at chambers could only give costs if the plaintiff brought himself within one of the three categories mentioned in the section; but if he did so, the judge was *obliged* to make the order. It was on this use of the word "*may*" in this section that the controversy arose as to whether it was discretionary or not to give costs. It was finally held that "*may*" meant "*shall*." In *Jones v. Harrison* (6 Ex. 828) there was the decision of the Exchequer that the word "*may*" was discretionary. In a note to the same case will be found the decision of the Common Pleas, in *McDougall v. Paterson*, that "*may*" gave the power, and that the power being given, and the circumstances in which that power was to be exercised being prescribed, there was no discretion but to exercise it. The Court of Exchequer subsequently adopted the decision of the Common Pleas, and held that in cases within the 128th section of the first county court act, and the 11th and 13th sections of the Extension Act, it was obligatory on a judge to give costs. *Asplin v. Blackman*, 7 Ex. 386.

Having thus deprived the court or a judge at chambers of a discretion in refusing costs, let us now see in what cases they are obliged to make an order, giving them to the plaintiff.

Section 12 of the Extension Act gave the judge at the trial power to give costs, where there were "*sufficient reasons*," in his opinion, for bringing the action in the superior courts. Section 13 prescribed the particular circumstances in which costs were to be ordered by the court or a judge at chambers. The distinction between the powers of a judge at the trial, and of the court or a judge at chambers, was no sooner made apparent than it was removed. This was effected, not by any alteration of sect. 12, or of the powers of the judge at the trial, which remain as they were, but by the repeal of section 13, as to the powers of the court or a judge at chambers. This was effected by the statute 15 & 16 Vict. c. 54, s. 4, which is now the enactment to which we must in all cases refer.

The first observation to be made on this enactment is, that by the use of the "*imperative*" word "*shall*," instead of the permissive word, "*may*," the question just mentioned as having been raised on the Extension Act is avoided, and the discretion of the court or of the judge at chambers is *excluded*, except in that instance in which a *discretion* is necessarily and expressly given. It is on this section, of course, that an order for costs will be made in all cases of a judgment by default; for the 30th sect. of the new statute provides that no costs shall be recovered unless an order is made for them, which order can only be made under the powers to do so, conferred by the above-mentioned section, with reference to the sections of all the other county court

acts. Could we exclude altogether from consideration the previous enactments relating to the county courts, unquestionably under section 30 of the new statute, costs might, if anything so absurd can be imagined, be ordered on a Monday and refused on a Tuesday, tossed for on Wednesday, and given or refused on the other days of the week, according as it rained or the sun shone. But the 3rd section of the new act expressly provides that it and all the previous statutes are to be read and construed as *one act*, and according to the well-known rule of interpretation, effect must be given to every part of this *parliamentary "one act."* How such effect could be given to the words of section 4 of the 15 & 16 Vict. c. 54, above referred to, "*whether there be a verdict in such action or not*," without interpreting section 30 of the new statute merely to exclude the exception of section 11 of the Extension Act of judgment by default, it is difficult to see, although many learned correspondents of the legal periodicals have arrived at this conclusion.

Proceeding, therefore, on the theory that full effect will be given to section 4 of the 15 & 16 Vict. c. 54, in all cases, including those in which there is judgment by default, the lecturer took up the cases provided for by that section in detail, beginning with the last case provided for, as that was the more convenient course, and as that case constituted the only case in which a discretion was given to the court or a judge at chambers.

An order, then, may be made entitling the plaintiff to judgment for his costs of suit:—

1. Where there was *sufficient reason* for bringing the action in the superior court, it is laid down in *Palmer v. Richards* (6 Ex. 385) that the court will not interfere with the exercise of a judge's discretion. When a *jurisdiction* is to be exercised by the court or a judge at chambers, you may appeal from the judge to the court; but to interfere with the discretion of a judge is practically to take away that discretion altogether. *Palmer v. Richards* was one of the cases arising out of the questions whether the word "*may*" gave a discretion, and the court refused on the ground just stated to interfere with the discretion of the judge, exercised in accordance with the previous decision of the court. It is said in the "*Reports*," and in some text-books, that *Palmer v. Richards* is overruled by *Asplin v. Blackman*, in which case the Exchequer adopted the interpretation of the other courts. But this does not appear from the report of the judgment, and we may still consider that *Palmer v. Richards* is not overruled, and that in the exercise of a discretion vested in a judge, there is no appeal from his decision to the court.

It need scarcely be added that there can be no appeal against the mode in which a judge's discretion is exercised at the trial, under section 12 of the Extension Act, which is still untouched, and which gives the judge at the trial power to order for "*sufficient reasons*." The sheriff may, under this section, certify as a "*presiding officer*," but he invariably refuses to do so, leaving the plaintiff to go to a judge at chambers.

In what circumstances this discretion will be exercised—what, in other words, will be considered a "*sufficient reason*" for bringing the action in the superior court—is a totally different question, upon which we have no decisions of the court to guide us. It would seem, however, that the fact of "*difficult questions of law*" being likely to arise is sufficient ground on which to obtain a *certiorari* to remove a plaintiff from the county court (*Goulding v. Caldwell*,

2 Reports of Practice Cases, 175); and it was held that a mere counter affidavit, that no difficult questions of law could arise, afforded no ground for quashing the writ when issued. (*Hodges v. Lawrence*, 17 Jur. 421; Ex.) But there is a great difference between making an affidavit for a *certiorari*, that difficult questions are likely to arise, and satisfying a judge after a trial that difficult questions of law have arisen. If the simplest case be made to appear sufficiently intricate, a pleader of any experience will easily concoct a long list of questions of law, to be laid before the judge, in order to get a *certiorari*. When the cause has been tried, all the ingenuity of all the pleaders in the Temple cannot distort the facts; so that, in truth, whether he shall sue in the superior court or not, in cases where he can only hope to make out "sufficient reasons" for so doing, becomes a question for the discretion of the plaintiff's attorney, in solving which he must exercise his own judgment, and rely upon his own experience.

2. The plaintiff will obtain an order for his costs where the action is removed from the county court by *certiorari*.

The reasons for giving costs in this case is so very obvious that we will pass at once to the

3. Third case, viz., actions for which no *plaint* could have been entered in the county court.

Now, construing the word "could" in its plain, ordinary, grammatical meaning, there are many actions which a plaintiff "can" bring in a county court, if he chooses to run the risk of an objection to the jurisdiction, or if he is foolish enough to calculate on the defendant consenting to waive that objection. This word "could" has consequently been so far controlled, in the legal interpretation which has been put upon it, that it may be laid down that the plaintiff, in order to his being deprived of costs, not only *might*, but *must*, have sued in the county court. You will find this result brought out in an able examination of the question by Mr. Justice Maule, in *Woodhams v. Newman* (6 C. B. 654). Under this head, therefore, we must consider what actions may, and what may not, be brought in the county court. It is not necessary to do more than allude to the cases which are expressly excepted from its cognizance, unless with the consent of the defendant. These (which comprise actions for libel or slander, malicious prosecution, or seduction) do not come within the category of cases which not only *might*, but *must*, have been brought in the county court. The cases in which the plaintiff can be deprived of costs are those in which the superior courts have a concurrent jurisdiction with the county courts. Those in which there is such a concurrent jurisdiction, but where there are also other circumstances intervening, which will be mentioned hereafter, constitute the exceptions enumerated in section 128 of the original county court act.

This concurrent jurisdiction is created by section 58 of the original county court act, coupled with the first section of the Extension Act, and, putting both together, it appears that "any debt, damage, or demand, whether on balance of account or otherwise," may be sued for in the county court.

But with reference to these debts, damages, or demands, it was provided that they should not extend so as to include any action of ejectment, which is a demand of possession, or any suit in which the title to any hereditaments, or to any tolls or purchases, should be in question, or in which the validity of any devise, bequest, or limitation might be dis-

puted, or to the other actions before alluded to—slander, libel, seduction, &c.

Observe here that, while slander, libel, and other actions are expressly excepted, it is enacted that the debt, damages, or demand shall not extend to any action where title "shall" come in question. It will not be enough that title might have come in question; the title itself must be *bond fide* in question. (*Lilley v. Harvey*, 5 D. and L. 649.) Suppose an action of trespass to realty in the superior courts, and the plaintiff to plead *not possessed*, so as to put the plaintiff on the proof of title, this will not of itself entitle the plaintiff to costs, if he recovers less than £5. Therefore, where the trespass appeared to be a distress by executors, who had been in possession a day and a night, and no question in fact arose as to their title—for the plaintiff as tenant was estopped from disputing the landlord's title—it was held, that as no title came in question, the jurisdiction of the county court was not ousted, and the plaintiff was not entitled to costs (*Latham v. Spedding*, 2 L. M. and P. 302).

But, on the other hand, the use of the word "*hereditaments*" does not control the word "title," so as to confine it to a title to a freehold, the term "*hereditament*" being a phrase to express that which is to be inherited by an heir; and consequently, it does not include chattels real. The "title to any hereditament," used in the provision of the county court act, has been extended to include a *term of years* (*Chew v. Holroyd*, 8 Ex. Rep. 249), and in such cases, therefore, where title is in dispute, the jurisdiction is ousted, and the plaintiff may safely sue in the superior court.

The proviso in the county court act uses the words, "title to corporeal or incorporeal hereditaments, toll, fair, market, or franchise;" it does not include a custom, which is not a toll, fair, market, or franchise, or an incorporeal hereditament. A custom exists for the benefit of those using or requiring to use it for the time. It does not pass to an heir; it cannot be conveyed; it is merely a collateral enjoyment annexed to a possession or an occupation. Therefore, where the plaintiff, the owner of a wharf on the Thames, sued the owner of the adjoining wharf for overlapping his wharf by his barges, and the defendant pleaded a custom in the river, that wharfingers may for a reasonable time overlap their neighbours' wharves while unloading at their own, it was held that this custom was not within the proviso, and that the plaintiff, who recovered forty shillings damages, was not entitled to his costs (*Davis v. Walton*, 8 Ex. 158).

There has been no decision as to the precise meaning of the subsequent words of the proviso, excluding from the county court jurisdiction cases in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed. In the former case, jurisdiction is excluded where title shall be in question. Here it is excluded where the validity of a devise, bequest, &c., "may" be in question. Where the validity may be questioned, the plaintiff would seem to be entitled to sue in the superior court, but not otherwise, as it has been held that a claim to arrears of an annuity charged by a will on real estate, is not necessarily within the proviso, the validity of the will not being necessarily in dispute (*Longbottom v. Longbottom*, 8 Ex. 203).

The court held, that in that case the claim was a debt, but as there were legal difficulties, they issued a *certiorari*; so that this would, no doubt, be considered a case in which "sufficient reason" existed for bringing the action in a superior court.

We have now disposed of the *proviso* which excludes, in those cases which are comprised in it, the jurisdiction of the county court, and come to the words conferring that jurisdiction itself—"debts, damages, and demands, whether on balance of account or otherwise." This latter phrase, "whether on balance of account or otherwise," being the only words calling for comment, since the interpretation formerly put upon them can no longer be applied to one set of cases—those in which a *set-off* exists. The 19 & 20 Vic. c. 108, s. 24, enacts that where the debt or demand claimed consists of a balance, arising after an admitted *set-off*, claimed or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action.

Sir William Blackstone, in his chapter on Pleading, in the 3rd vol. of the "Commentaries," classes the plea of tender and set-off in the same category as pleas admitting the existence of a cause of action at the time at the suing out of the writ. In the former plea the defendant may be supposed to say, "True, I owe the money, but I offered it, and you would not take it; it is your own fault, therefore, that you brought an action, and you must pay the cost of it." The plea of *set-off*, again, merely says, "Pay me, and I will pay you." Both pleas admit the *right of action*. The plea of payment is different from either. In it the defendant says, that the plaintiff's claim was satisfied *before* action, and had consequently *ceased to exist*. Therefore, where a plaintiff sued in the superior court, and his claim was reduced by a payment below £20, it was held that he was deprived of costs, because, in truth, he had not at the time of action brought a claim for £20 (*Turner v. Berry*, 5 Ex. 858).

This case was decided on the 129th section of the first county court act, but the principle laid down quite applies to cases under the 15 & 16 Vict. c. 54, s. 4.

On the other hand, where the plaintiff sued for a sum exceeding £20, but which was reduced by a *set-off* to less than £20, it was held that the plaintiff was entitled to recover his costs (*Woodhams v. Newman*, 6 C. B. 654). The reason is obvious. The plaintiff had a just claim for more than £20: he had no assurance that the *set-off* would be pleaded; and he could not know but that it might be made the subject of a *separate action*; for a defendant is *not bound* to plead a *set-off*. The statute permitting the plea to be pleaded only enables a defendant to do so; it does not make it compulsory on him; and when that plea is pleaded it is generally with a view to have the necessity of a *separate action*. On a similar ground, where the plaintiff sued for more than £20, but recovered *less* in consequence of a tender having been successfully pleaded, the plaintiff was held entitled to his costs (*Cross v. Seaman*, 10 C. B. 884). The late Chief Justice Jervis, delivering the judgment of the Court, said—"I think there ought to be no rule. Tender and *set-off* are not like payment. The plaintiff cannot know that the defendant will set up his tender or his *set-off*." So that in these cases, whatever might be the amount recovered by the *verdict*, the plaintiff formerly was entitled to his costs if the claim exceeded £20. It is in cases of *set-off* only, and not in cases of tender, that the law would appear to have been altered by the section of the recent statute which has been read.

The effect of the decision in *Woodhams v. Newman*, which was the case as to *set-off*, was practically to give the superior courts *exclusive* jurisdiction in all

actions arising out of mutual credits and accounts, where the gross claim exceeded £20. The new statute in the section expressly confers this jurisdiction on the county courts in the case of claims reduced by *set-off*. Giving effect by the rule of interpretation to this lecture, we cannot but arrive at the conclusion that the *gross amount* of the *verdict* (in *set-off* cases, as in cases of *payments*) irrespective of the amount claimed by the writ, will constitute henceforth the *datum* on which costs will be given or refused.

One other observation may be made that this reduction of a claim by *set-off* will probably be confined to those cases where the *set-off* arises to the defendant in the same right as the cause of action accrues against him. Thus in an action by an administrator for money which has become due to him *qua administrator* the defendant will probably not be allowed to consider a debt due to himself from the *intestate* as capable of being *set off* against the plaintiff's claim. See on this subject the cases collected in *Watts v. Rees*, 9 Ex. 696; 10 Ex. 410.

We now come to three classes of cases in which the plaintiff is entitled to his costs, viz., those "debts, damages, and demands," in which, although there is a *concurrent jurisdiction* with the county courts, there are other circumstances which justify the plaintiff in bringing the action in the superior courts. These constitute the cases of section 128 of the original County Court Act.

5. Fifthly, therefore in cases where "the plaintiff dwells more than twenty miles from the defendant" he may sue in the superior court. The plaintiff may dwell *within twenty miles* of the defendant's *place of business*; to recover his costs he must dwell more than *twenty miles* from the defendant's *place of abode*. the word *dwell* in the section being applicable to both parties (*Peterson v. Davis*, 6 C. B. 235); consequently the plaintiff is not bound to sue in the county court because *he*, the plaintiff, *carries on business within twenty miles* of the defendant, unless he also *dwells* within that distance (*Shiels v. Rait*, 7 C. B. 116); and if he dwells at two places, one less and one more than twenty miles from the defendant, he may sue in the superior court, because it cannot be said that he does *not dwell* more than twenty miles from the defendant (*Macdougall v. Paterson*, 21 L. J. 27; C. P.). A corporation dwells where it carries on its business (*Taylor v. Crowland Gas Company*, 11 Ex. 1).

These are the *four* cases, out of many others, which have put a judicial interpretation on the two words "*dwells more*;" and this piece of legislation has given rise to a most reprehensible practice in cases of small loans—that of indorsing the bills taken for the amount to parties resident at a distance. This practice, indeed, it was which gave rise to section thirty of the new statute, an enactment passed, no doubt, to protect poor people from the oppression of the pettifoggers who bring discredit on the profession, but which will in many cases produce great injustice on the honest plaintiff resorting to the speediest and most effectual method of recovering the money, without which he may be unable to carry on his business or to support his family.

6. Sixthly, the plaintiff may safely sue in the superior court "where the cause of action did not arise wholly or in some material point, within the jurisdiction of the county court within which the defendant dwells or carries on his business at the time of action brought." If, therefore, you have dealings with a man, either at his house or place of business, to an amount less than £20, in the district

of his local court, you must sue him *there*, one of the chief objects in the establishment of the county courts by our Saxon ancestors, as well as by the recent statutes, being to bring justice home to every man's door.

We have seen already what the word "dwells" means. It was thought that the words "carries on his business" would include everything except "dwelling," and consequently "every body." But a strict interpretation was soon put upon these words also. Thus a clerk going daily to a place of business, when he is employed, does not "carry on his business" there within the meaning of the act (*Buckley v. Ham*, 5 Ex. 48). The defendant must have a *fixed place of business* of his own (*Rolfe v. Learmouth*, 18 Q. B. 196). This is law everywhere, except in the City of London, which has county court statutes of its own. The City Extension Act applies to a defendant "*who has employment*" in the City; and it also deprives plaintiffs of costs where less than £50 is recovered in action of contract. But no notice need be taken of that particular enactment, because it was practically repealed in the first case at the Guildhall, in which a certificate was applied for, the judge, when his attention was called to the enactment, justly considering, apparently, that the insertion of £50 instead of £20 was very like a trick by the City draftsmen, and not unlike a deception practised on the Legislature. It were well if these things were oftener called by their right names.

Carrying on business seems to mean "trading," not "trading" as technically understood with reference to bankruptcy; but as buying, selling, and dealing generally. A clerk of the Privy Council, for instance, does not "carry on business" at the Privy Council (*Sangster v. Kay*, 5 Ex. 386).

This dwelling or carrying on business must be by all the parties where there are more than one; for although no plea in abatement for non-joinder of a co-defendant in actions of contract is allowed in the county court, and although, therefore, the plaintiff may, by suing in that court, pounce upon any single defendant he chooses to select, he is not bound to do so; he is, on the other hand, entitled to bring all the defendants into court, and make them all answerable for his debt. The non-joinder of a co-plaintiff, again, is a ground of *non-su*; so that, in the county court, all the plaintiffs ought to sue. If, therefore, there be more than one plaintiff or defendant, they must, in order that the plaintiffs be deprived of costs, be both or all resident within the jurisdiction of the court in which the cause of action arose. If any one of them is not so, the action may safely be brought in the superior court (*Hickie v. Salamo*, 8 Ex. 59; *Robertson v. Gunning*, 1 L. M. and P. 424).

So much for the "dwelling or carrying on business" in the county court district. Besides one or other of these circumstances, it is required, in order to entitle the plaintiff to costs, that the cause of action should not have arisen "*wholly or in some material part*" in the district. The Court of Common Pleas has considered that the *material part* must pervade the whole of the cause of action, in order to compel the plaintiff to sue in the county court, as if all the goods, the price of which was claimed, were valued and delivered in one district (*Dodd v. Wigley*, 7 C. B. 106). The Court of Exchequer, on the other hand, held that *one* cause of action—that is, the *cause of one* action arising in the district—the plaintiff must sue for his whole claim there (*Wood v. Perry*, 3 Ex. 442).

The ordering and delivering of goods within the jurisdiction constitute a cause of action arising *wholly* within it. But the plaintiff is not justified in suing in the superior court merely because the delivery took place out of the district, if something *material* was done within it; for in this case the cause of action has arisen there in a *material part*. Thus, *signing the contract* for the goods themselves is a *material part* of the cause of action (*Norman v. Marchant*, 21 L. J. 256, Ex.). So the *acceptance* of a bill is a *material* cause of action (*Roff v. Miller*, 19 L. J. 278, C. P.). So is the indorsement, and of course the drawing (*Heath v. Long*, 19 L. J. 825, Q. B.).

Those cases in the books on section 60 of the original county court act must not be confounded with those occurring on section 128, which are now under review. Section 60 of the first statute enables the judge, and section 15 of the new statute enables the registrar, to issue summonses against defendants residing *out of the jurisdiction*, where the *cause of action* arose within it. *Cause of action* here means *whole* cause of action (*Hernaman v. Smith*, 10 Ex. 659). This arising of the *whole cause of action* is required to give *jurisdiction* where the defendant does not reside within the district. The 128th section again says that where the cause of action *does not wholly or in some material part* arise *within the jurisdiction*, the plaintiff may sue in the superior court. The two sets of cases are very apt to be mixed up by the student, and to create a confusion.

7. Seventhly, where any officer of the county court shall be a party (except in interpleader claims, to which he is always made a party just as is the sheriff in the superior courts), the plaintiff may sue in the superior courts. But the suit must be by or against an *officer of the county court*. A plaintiff, therefore, who sues as administrator of an officer of the county court, or who sues the defendant as administrator of such an officer, is not entitled to his costs if he sues in the *superior court* in an action which might have been brought in the county court (*Robieson v. Rees*, 19 L. J. 145, Q. B.). The Statute of Gloucester gives the plaintiff costs in all cases; those which deprive him of this right must of course be strictly interpreted.

These are the *seven* different cases in which the plaintiff in the superior court may obtain judgment for his costs when he recovers, whether by verdict or judgment by default, less than £20 in an action of contract, or £5 in an action of tort.

We have gladly availed ourselves of the opportunity which has thus presented itself of placing the whole law on this point before our readers.

## QUESTIONS AT THE EXAMINATION.

*Michaelmas Term, 1856.*

### I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship?
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

## II. COMMON AND STATUTE LAW AND PRACTICE OF THE COURTS.

5. What is the meaning of a local and a transitory action? What actions are local and what transitory?

6. What is the difference between a simple contract and specialty debt?

7. What is the first step to be taken in an action of trover?

8. What is the material difference between an action of detinue and trover?

9. Is a civil action maintainable in any case in which the cause of action constitutes an indictable offence?

10. If the acceptor of a bill of exchange refuse payment of it when due, is any, and what, step necessary before suing the drawer or indorser?

11. If an action be brought upon a bill of exchange to which there is a defence, state the steps necessary to be taken under the "Bills of Exchange Act, 1855," in order to let in the defence.

12. Where an executor is sued for a debt owing by his testator, and the plea is *plene administravit* only, and the plaintiff cannot disprove the plea, but there is other personal estate to be got in, what course should the plaintiff take?

13. Where a married woman is sued as a *feme sole*, and she pleads coverture as an answer and succeeds, what costs is she entitled to?

14. How is advantage to be taken of a cause of defence arising after action brought?

15. When an action of contract is brought against one only of several partners, what step ought the defendant to take?

16. In what cases may a defendant compel a plaintiff to give security for costs, and what is the mode of proceeding?

17. If a plaintiff delay his proceedings in an action for a considerable, and what space of time, is it necessary that he should give any, and what, notice before taking further proceedings?

18. Will a tender be good, if clogged with any, and what, conditions?

19. Can a plaintiff be non-suited against his will, and in what respect is his situation better by a nonsuit than by a verdict for the defendant?

### III. CONVEYANCING.

20. Conveyance of fee simple estates unto and to the use of A. and B. their heirs and assigns, as to the estates of B. and his heirs in trust for A. and his heirs. Can A. or B., and which of them, if either, devise the legal estate?

21. Conveyance of fee simple estates to A. and the heirs of his body by B. his wife. B. dies without issue leaving A. surviving her. What, after B.'s death, is the nature of A.'s estate?

22. A. dies possessed of leasehold estates making a will appointing two executors. Can one of the executors make a valid assignment so as to pass the legal estate in the entirety without the co-executor joining?

23. A., having two sons, dies intestate, seised of estates of the respective tenures of fee-simple (or frank-fee), gavel kind, and borough English. To which of his issue do the estates respectively descend?

24. A person, seised of estates in fee-simple, and of copyholds of inheritance, dies intestate, leaving no heir. Who will become entitled to the respective estates? and what is the technical term used to denote the transmission?

25. Estates limited to A. and his assigns for his life, and after his death, to the heirs male of his body. What estate does A. take? Is there any, and what, leading rule or authority on the subject?

26. An estate is conveyed to such uses as A. shall by deed appoint, and in default of appointment to other uses. A. appoints the estate to C. and his heirs, in trust for D. and his heirs. In whom, under such appointment, does the legal estate vest?

27. What are the technical names of each part of a deed, being a conveyance of fee-simple estates from a vendor to a purchaser?

28. State concisely the meaning of the following terms; 1st, Intercommon; 2nd, Freebench; 3rd, Jointure; 4th, Hereditament; 5th, Advowson; 6th Common of Estovers.

29. Mortgage to A. for £1000, then to B. for £800; A. sells his charge to C., a stranger, for £700. Is C. entitled, as against B., to the whole debt of £1000, or only to the £700 he paid?

30. A. mortgages freehold estates to B. with powers of sale, and dies. B. then exercises his powers of sale, and after retaining his principal interest and costs, there is a surplus. To whom will the surplus belong—viz., to the heir, or to the personal representative of the mortgagor?

31. A term of years is vested in A. who dies intestate, and administration of his effects is granted to two persons. Will an assignment of the term by one of the administrators pass the legal estate in the entirety, or in a moiety only?

32. Estate is mortgaged first to A.—then to B.—then to C.; B. and C. both having notice of A.'s Mortgage, but neither B. nor C. having notice of each other's mortgage. Can C. by any, and what, means acquire a priority over B?

33. Estate is mortgaged to A. in fee; he enters as mortgagee, and then dies leaving a widow. Is she dowerable of this estate?

34. Can a lord "approve" part of the waste lands of his manor, and if so, under what law, and to what extent and subject to what restrictions, if any?

### IV. EQUITY AND PRACTICE OF THE COURTS.

35. What are the principal matters in which courts of equity have jurisdiction and power to grant relief?

36. In which of such matters have they exclusive jurisdiction, and in which concurrent with other courts?

37. What is an injunction? state some of the cases in which it may be granted before decree, when ex parte, and when otherwise.

38. What is a plaintiff to do after bill filed to obtain an injunction immediately?

39. Can a creditor be enjoined from proceeding to recover his debt at law after a bill has been filed to administer, and at what stage of the action at law? and if so, how is he to recover his debt?

40. When an order for an injunction has been pronounced, what is the course to take to render it immediately effectual: and what is to be done if the defendant does not submit? State the steps to be taken thereupon by the plaintiff.

41. Enumerate the equity judges in their order and rank, and describe the constitution of the courts of appeal, including the highest in the realm, and the mode of giving judgment in each.

42. How is evidence taken in equity, and who are

the officers appointed to take it, and what is the other machinery employed in aid?

43. State the duties of the clerks of records and writs.

44. And of the registrars of the court.

45. What is the effect of enrolling a decree of a Vice-Chancellor, or of the Master of the Rolls, and within what time should it be enrolled?

46. A creditor by simple contract files a bill on behalf of himself and others who are creditors, against the executors of the will of a deceased person to administer his estate. Set out the steps to be taken successively in the suit until actual distribution of the assets.

47. State the order and distribution of the assets when there is real as well as personal estate, the former being charged with mortgages, and there being bond and other specialties of the deceased.

48. State what becomes of the debt of a plaintiff in a suit if the estate is insufficient to discharge the specialty debts, and how are the costs of such a suit to be paid in such case?

49. Define the principle which guides courts of equity in the construction of wills.

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. Can a landholder be adjudged to be trader in respect of dealings with the produce of his own estate?

51. At what period, as regards the time of the adjudication of bankruptcy, is the adjudication advertised; and how can the advertising be hastened or delayed?

52. If a man become, and be adjudged, bankrupt a second time, in what, if any, cases will his certificate under his second bankruptcy protect his future estate?

53. In whom is vested the power of granting, or refusing, a certificate of conformity?

54. Give instances of cases in which the question of goods being "in the order and disposition" of a trader is a question of importance.

55. If one of two partners be adjudged bankrupt the other remaining solvent, what rights and powers have the assignees of the bankrupt over, or in, the partnership property?

56. In what cases, and at what periods, may a bankruptcy be compromised or superseded by consent or arrangement?

57. What are the requisites of a petitioning creditor's debt as regards the amount and nature of the debt?

58. What are the requisites of such debt as regards the period of the trading?

59. In what case can another petitioning creditor's debt be substituted for that on which the adjudication has taken place; and what are the requisites of the debt to be substituted?

60. What are the requisites as to the time of an act of bankruptcy, with reference to the time of trading?

61. Are there any, and what, limits of time, with reference to the act of bankruptcy, within which a petition for adjudication must be presented?

62. What acts of a trader would be held to be acts of bankruptcy in case a petition for adjudication be presented within some, and what limited period?

63. What incorporated or joint stock companies can be adjudged bankrupt; and what are the statutes rendering such company liable to the bankruptcy law, and directing the course of proceeding?

64. State what constitutes a voluntary act of bankruptcy, and what an involuntary or compulsory one, by such company, on which a petition for adjudication can be presented.

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. State the distinction between felony and misdemeanor.

66. Are these offences alike punishable by forfeiture?

67. What is the principle in our law which serves to excuse crime? and give some instances in which that principle prevails.

68. Define homicide; and state some cases under each head, in which the law determines it to be justifiable, excusable, or felonious.

69. In case of murder, is it necessary to set forth the manner in which the death was caused?

70. Does drunkenness extenuate or aggravate crime; and is it material to consider the state of intoxication, when the question is as to the prisoner's intention?

71. How is the grand jury constituted? and what is the least number of which it may be composed?

72. If the grand jury find "a true bill," what proceedings take place in order to the arraignment of the accused?

73. If they should find "not a true bill," is the party accused free from further accusation, or may a fresh bill be preferred against him at a subsequent assize?

74. In what cases may the magistrate refuse bail?

75. In such cases, what is the prisoner's mode of obtaining relief?

76. What effect has the Crown's pardon upon the convicted offender?

77. Can a party accused before a magistrate insist upon the aid of his counsel or solicitor on the preliminary inquiry?

78. Has the magistrate the power, by any recent statutes, to pass a summary sentence on the party accused before him? and if so, mention one such statute.

79. State what are the principal modes of punishment now existing.

### LIVERPOOL LAW SOCIETY.

#### ANNUAL REPORT OF THE COMMITTEE.

1st November, 1856.

In presenting their annual report, your committee have the satisfaction to state that the society at present consists of 123 members, a larger number than at any previous time since its formation in the year 1827. During the past year there has been a greater accession of members than usual, eleven gentlemen having been admitted, namely, Mr. James Roger Dutton, Mr. William Joseph Robinson, Mr. Francis D. Lowndes, Mr. John Conway, Mr. Henry Marshall, Mr. Isham H. E. Gill, Mr. Barton Wrigley, Mr. William Blackmore, and Mr. James Brown, all of whom practise in Liverpool, and Mr. Henry Gaskell Taylor, and Mr. John Ansdell, of St. Helens. The two last named gentlemen are the first members elected under the new regulation as to the admission of members.

One member, namely, Mr. David Evans, has retired from the society.



The labours of your committee have been very considerable, owing to the numerous measures affecting the law which were introduced into Parliament during the last session, and to the many questions affecting the welfare of the profession which have been brought before them.

With a view to guard, as far as practicable, against hasty legislation, your committee, at the commencement of the session, appointed a standing committee for the purpose of examining all bills introduced into Parliament, and reporting thereon to the general committee.

Notwithstanding the large number of measures, affecting the law and its administration, which were introduced into Parliament, the past session was peculiarly barren in its results, few of the bills affecting the English law having received the Royal Assent.

Early in the session, a Bill for the Incorporation and Regulation of Joint Stock Companies, and other Associations, was introduced into Parliament, and occupied the attention of the committee. Part third of the bill, as originally drawn, provided that all joint stock companies should be wound up through the medium of the Court of Chancery. Your committee felt that while that court was already overburthened with business, there existed, in all parts of the country district court of bankruptcy, with machinery well adapted to carry out the clauses in question. They therefore prepared a petition to the House of Commons, pointing out the costly character and delay of proceedings in the Court of Chancery, and praying that the winding up of joint stock companies, to be established under the provisions of the bill in the provinces in England, should take place in the district courts of bankruptcy. In addition to which, your committee communicated with the Chamber of Commerce on the subject of the bill, and at the instigation of your committee and the President of the Chamber of Commerce, certain clauses were inserted which had the effect of altering the bill to the satisfaction of your committee.

The County Court Acts Amendment Bill also engaged the attention of the committee. The general scope of the bill was considered calculated to improve the administration of justice; but there were some clauses which, in the opinion of the committee, required amendment, and others which it was thought desirable should be withdrawn. The framer of the bill, ever mindful of the interests of the barrister of seven years standing, and as usual ignoring the existence of the attorney, declared in sec. 4 the qualification of a deputy judge to be, that he should be a barrister, or special pleader, of seven years standing. Attorneys were excluded from the office, although not excluded by the former County Court Acts. This the committee considered an injustice, and that the bill ought to be amended by making attorneys eligible. Clause 18 directed that where the debt or damage claimed should exceed twenty pounds, the plaintiff, his attorney, or agent, should be at liberty to serve the summonses; and clause 25 directed that in similar cases the defendant should give notice of his intention to defend a certain time before the day of trial, or suffer judgment by default. In each of these cases the committee considered that to make the clause of much practical utility, the amount should be reduced to ten pounds. Sec. 31 declared, that in cases where the debt or damage should not exceed twenty pounds, no attorney should recover any

further costs from his own client than those mentioned in clause 30, which were payable between party and party, unless the registrar of the court should be satisfied by writing, under the hand of the client, that he had agreed to pay such further charges. Your committee, considering this a most unjust clause, and feeling satisfied that it would be productive of great difficulty and annoyance, both to attorney and client, in the transaction of business, determined to make an effort to have it erased from the bill, as also sec. 70, which declared that no costs should be given in an action commenced in any local court for a sum not exceeding twenty pounds, in actions for which claims might have been entered in any county court. The effect of this clause would have been to exclude from the Liverpool Court of Passage a large portion of its business, and the public would, to that extent, have been deprived of the advantages of that most useful and efficient court.

A petition was prepared and presented to the House of Commons in favour of the bill generally, but suggesting that the alterations in sec. 4, 13, and 25, as above-mentioned, should be inserted in the bill, and that clauses 31 and 70 should be expunged. Your committee entered into communication with the Town Clerk of Liverpool, and with several of the Provincial Law Societies, with a view of procuring their assistance in opposing sec. 70, which they have the satisfaction to state was eventually withdrawn. They regret to report they were unsuccessful on the other points.

Several bills were introduced affecting the ecclesiastical courts, one styled the Wills and Administration Bill, brought in by Government; another, the Testamentary and Matrimonial Jurisdiction Bill, introduced by Sir Fitzroy Kelly; and a third, the Ecclesiastical Courts Jurisdiction Bill, introduced by Mr. Collier. The committee, while approving of many of the provisions of each bill, considered the Government measure the more desirable one, and they accordingly prepared and presented to the House of Commons a petition in its favour. The committee regret to state that the bill, perhaps, without exception, the best and most important of all the bills affecting the law introduced into Parliament during the session, was withdrawn by its promoters. Sir Fitzroy Kelly's Bill, and that of Mr. Collier were also withdrawn. Your committee, however, believe that the Solicitor General will again introduce his bill at the commencement of the ensuing session.

Early in the session, a bill to amend the law relating to the qualification of justices of the peace was introduced into the House of Commons by Mr. Colville, sec. 23 of which declared that no attorney, solicitor, or proctor in any court should be capable of being a justice of the peace for any county, riding, or division during such time as he should continue to practise as an attorney, solicitor, or proctor. Your committee, seeing the gross injustice of the clause, determined to spare no exertion in their endeavours to have it expunged from the bill.

A petition to the House of Commons, praying that the House would not allow the clause to become law, but to enact in lieu thereof, that any attorney, solicitor, or proctor acting as justice of the peace for any county, riding, or division, should be prohibited from practising professionally either directly or indirectly in any general or petty sessions, or in any other business usually transacted

efore justices of the peace, was prepared and presented to the House, and several members of Parliament were written to, soliciting their support to be prayer of the petition. Copies of the petition, accompanied by a letter from the Honorary Secretary, were sent to the Incorporated Law Society, the Metropolitan and Provincial Law Association, the *Law Times*, the *Legal Observer*, and to the principal provincial law Societies in the kingdom, and to upwards of two hundred practising attorneys in England and Wales, urging their active co-operation in a matter so vitally affecting the status of the profession. The bill was eventually withdrawn.

The subject of professional remuneration in equity matters has received the consideration of your committee; and in consequence of the continued delay in the issue of the long promised new and improved scale of costs, your committee thought it desirable again to memorialise the Lord Chancellor on the subject; your committee accordingly prepared and presented a memorial to his lordship.

The new scale of costs has not yet been published, but your committee have satisfaction in reporting that they have reason to expect its speedy issue.

Your committee some time since received a communication from W. M. James, Esq., the Vice-Chancellor of the Chancery Court of Lancashire, on the subject of the heavy expenses in small administration suits, and suggesting whether an arrangement for reducing the cost in small suits could not be made, and thus extend the advantages of the court to the less wealthy.

Your committee, considering that the suggestion of the Vice-Chancellor merited the best consideration of the profession, appointed a sub-committee to communicate with the Manchester Law Association on the subject, and to wait upon the Vice-Chancellor. The sub-committee, in conjunction with a deputation from the Manchester Law Association, had an interview with the Vice-Chancellor in August last, when his suggestion that in administration suits, where the estate does not exceed £300, the court, counsels', and solicitors' fees should be fixed on a lower scale, was discussed and approved.

A member of your society having made a complaint that certain building societies in Liverpool were seeking to insist upon their solicitors' charges for conveyances and mortgages being fixed at a definitive sum under the penalty of a removal from office, your committee, after fully considering the matter, passed a resolution condemnatory of the introduction into the profession of a principle of competition between its members, dependent upon lowness of charge, and not upon the performance of duty or the exercise of skill.

The resolution of the committee was afterwards approved of and adopted at a special general meeting of the members of the society, called for the consideration of the question.

The subject of the re-arrangement of the Cause List at the Liverpool Assizes has occupied the attention of your committee. In February last, the president, Mr. Banner, with Mr. Knowles, the Attorney-General for the County Palatine, had an interview in London with Mr. Baron Martin on the subject, who suggested that the matter should be brought before the judges on circuit at York during the ensuing assizes.

Accordingly, in March, your committee deputed their president to proceed to York, for the purpose of conferring with Mr. Knowles and the other leading

members of the bar on circuit as to the best course to adopt. The president, in conjunction with Mr. Knowles, had an interview with the judges on circuit, Mr. Baron Martin and Mr. Justice Willes, which resulted in an arrangement which proved alike acceptable to the bar, the attorneys, and the public.

Their lordships subsequently made a rule of court regulating the order in which the common and special juries should be taken, and directing that at four o'clock on each day a list should be drawn out by the prothonotary of a certain number of cases to be taken on the following day.

The subject of the want of accommodation in the Crown Court at St. George's Hall for the clerk of the Crown, and for the attorneys in the Nisi Prius Court having been brought before the committee, a sub-committee was appointed to consider the matter, and endeavour to remedy the evil. The sub-committee obtained an interview with the law courts committee, who consented to make the alterations suggested, and which were subsequently carried out. In the Crown Court the reporters were removed from the seats near the clerk of the Crown to a gallery erected for their accommodation; and in the Nisi Prius Court the seats in front of the barristers, as also those below the grand jury box, were appropriated to the use of the attorneys.

Your committee have much pleasure in alluding to the Aggregate Meeting of the Metropolitan and Provincial Law Association, held in Liverpool on the 14th and 15th October last.

It will be remembered, that in the last report, it was stated that the meeting would be held in Manchester in the present year, and in Liverpool in 1857. In July last, a communication was received from the Manchester Law Association, suggesting that as next year there would be an Exhibition of Art Treasures in Manchester, it would perhaps be desirable that the meeting in that city should be postponed, and that Liverpool should be the place of meeting in October of the present year.

Your committee considering the suggestion deserved attention, and being desirous of meeting the wishes of a society whose members are always ready to assist your committee in matters connected with the profession, immediately assented to the proposal; a committee was accordingly appointed to make the necessary arrangements for giving a fitting reception to the visitors who should attend the meeting. The use of the library in St. George's Hall was kindly granted by the Town Council, and this society had the gratification of entertaining the whole of the strangers at a dinner at the Adelphi, on the 14th, and at a dejeuner at New Brighton on the following day. The Mayor of Liverpool hospitably entertained the principal visitors at a dinner at the Town Hall on the 16th.

The meeting, which was well attended by attorneys from all parts of England, was considered more successful than any previous meeting of the Metropolitan and Provincial Law Association.

Several interesting papers of subjects connected with the profession were read and discussed.

The committee would urge upon those members of this society who are not already members of the Metropolitan and Provincial Law Association the desirability of at once joining its ranks, feeling assured that the interests of the provincial attorney, as well as those of the London practitioner, will receive the anxious consideration and support of the association.

The committee have had the unpleasant duty of investigating a matter in dispute between two members of the society, involving a breach of professional undertaking, and regret to report, that after fully investigating the case, they were compelled to come to the conclusion that such breach had been committed.

The catalogue of the books of the library having become in a great measure useless, a sub-committee was appointed, who, with the assistance of the librarian, have prepared and printed a new one.

The laws of the society have been revised, and as regards the admission of members, extended.

Up to the present time, the admission of members has been limited to attorneys practising in Liverpool, but with a view to increase the usefulness of the society, your committee proposed to extend the privileges of membership to attorneys practising within a circuit of 20 miles round Liverpool, which proposal, on being submitted to a special general meeting of the society, was unanimously adopted. Your committee reasonably hope that many of their professional brethren practising in the towns within the prescribed limit will avail themselves of the extended rule.

In May last, the Rev. Mr. Statham intimated to your committee, his intention to terminate the tenancy of the library on the 1st December next, but at the same time expressed his willingness to relet the library at an increased rent, and upon certain stipulated conditions. A sub-committee was appointed to consider the matter. Mr. Statham's proposal being considered inadmissible, the sub-committee were directed to procure, if possible, other and more suitable premises nearer to the Town Hall, but the attempt proving unsuccessful, your committee were at length reluctantly compelled to continue the tenancy of the present library as yearly tenants, at the increased rent required by Mr. Statham.

The members of the committee who go out of office by rotation, all of whom are re-eligible, are Mr. Banner, Mr. Bell, Mr. William Radcliffe, Mr. Edward Whitley, and Mr. John Yates, Jun.

## NEW ORDERS IN LUNACY.

*Saturday, the 8th day of November, in the twentieth year of the reign of her Majesty Queen Victoria, 1856.*

I, ROBERT MONSEY, Baron Cranworth, Lord High Chancellor of Great Britain, intrusted, by virtue of her Majesty the Queen's sign manual, with the care and commitments of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, do, with the advice and assistance of the Right Hon. Sir James Lewis Knight Bruce and the Right Hon. Sir George James Turner, the Lords Justices of the Court of Appeal in Chancery; also being intrusted, as aforesaid, and by virtue and in exercise of the powers and authorities in this behalf vested in me by "The Lunacy Regulation Act, 1853," and of every other power or authority in anywise enabling me in this behalf, order and direct as follows, that is to say—

I. From and after the 15th day of November, 1856, in lieu of copies of proceedings, and documents in matters in lunacy being made and delivered by the officers in lunacy at the office in which they are filed, or left, copies of such proceedings and docu-

ments (save as hereinafter excepted), are to be made, delivered, charged, and paid for according to the following regulations:—

1. The following copies are exempted from this order, that is to say, office copies of affidavits to be made for, and taken by, the party filing the same copies of documents prepared in the offices of the Masters in Lunacy and Registrar in Lunacy respectively, to be made for, and taken by, the party having the conduct of the proceedings; office copies of all documents and proceedings filed in the office of the Registrar in Lunacy, and copies of all documents filed or deposited for safe custody in the office of the Masters in Lunacy.
2. The party or his solicitor requiring any copy (save as hereinbefore excepted), is to make a written application to be delivered to the party by whom the copy is to be furnished or his solicitor with an undertaking to pay the proper charges.
3. Upon such requisition being made, with such undertaking as aforesaid, copies of such proceedings or documents are to be made by the party or his solicitor filing or leaving the same, or who, under the first rule, may have taken office copies thereof.
4. The copies are to be ready to be delivered at the expiration of forty-eight hours after the delivery of such request and undertaking, or within such other time as the Lord Chancellor or the Lords Justices intrusted as aforesaid may in any case direct, and are to be delivered accordingly upon demand and payment of the proper charges.
5. The charges for all such copies are to be at the rate of 4d. per folio.
6. Copies of bills of costs are to be made side for side, so as to correspond with the bills of costs left in the office.
7. The folios of all copies are to be numbered consecutively in the margin thereof, and the name and address of the party or solicitor by whom they are made is to be indorsed thereon, and such party or solicitor is to be answerable for the same being true copies of the originals, or of the office copies of the originals, of which they respectively purport to be copies, as the case may be.
8. Any party or solicitor who has taken any office copy, mentioned in Rule 1, is to produce the same in court, or at the office of the Masters in Lunacy, when required, for the purpose of the proceedings to which the same relate.

II. All office copies, and copies to be furnished by parties or their solicitors, shall be written on paper of a convenient size, with a sufficient margin, and in a neat and legible manner, similar to that which is usually adopted by law stationers, and in the case of copies to be furnished by parties or their solicitors; unless so written, the parties or solicitors furnishing them shall not be entitled to be paid for the same.

III. In case any solicitor, who shall be required to furnish any such copy as aforesaid, shall either refuse, or for two clear days from the time when the application for such copy shall have been made, shall neglect to furnish the same, the person by whom such application shall have been made shall be at liberty to procure a copy from the office in which the original document shall be, or shall have been, filed

or left, in the same way as if no such application had been made to the solicitor; and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

IV. The taxing masters shall not allow any costs in respect of any copy so taken as aforesaid, unless the same shall appear to them to have been requisite, and to have been made with due care.

CRANWORTH, C.  
J. L. KNIGHT BRUCE, L. J.,  
G. J. TURNER, L. J.

## LAW OF ATTORNEYS AND SOLICITORS.

ATTORNEY'S LIEN ON JUDGMENT—ATTACHMENT UNDER COMMON LAW PROCEDURE ACT, 1854.

THE plaintiff in an action of *Edwards v. Hodges* recovered judgment with £50 damages. Mr. Jay acted as his attorney, to whom he was indebted in a balance for costs. A Mr. Hough afterwards sued Edwards, and obtained judgment for £19 11s., and proceeded under the garnishee clauses of the Common Law Procedure Act, 1854, to attach the debt due to Edwards on his judgment against Hodges. The amount was thereupon paid into court, and Mr. Jay took out a summons, calling on Mr. Hough to show cause why the said sum of £19 11s. should not be paid out of court to him, on the ground that he had a lien on the judgment obtained by Edwards against Hodges. Platt, B., made the order, and a rule was obtained to rescind the same, and for payment of the money into court, upon which it was referred to the Master to ascertain whether there was any particular lien in the cause of *Edwards v. Hodges* for extra costs; and also whether there was any special agreement between Mr. Jay and Edwards, that the former should retain the damages recovered by him in his action against Hodges, against Mr. Jay's bill of costs.

The Master found both questions in the negative, and certified that it was conceded before him that Mr. Jay's general bill against Edwards was more than sufficient to cover the amount of Mr. Hough's judgment.

*Pollock, C. B.*, said—"We have no doubt about the matter. The passage cited from the case of *Barker v. St. Quentin*,\* 12 M. and W. 441, is conclusive on the subject, and the rule will thereupon be absolute."

*Hough v. Edwards*, 1 Hurlstone and N. 171.

## LAW OF COSTS.

SHORT-HAND WRITER'S NOTES OF EVIDENCE ON REFERENCE.

TWO actions against the Commissioners of Woods and Forests and their engineers for damages done to the foundation of the plaintiff's house, by the sinking of artesian wells to supply the Trafalgar-square fountains, were referred to arbitration by order of Nisi Prius, the costs of the action to abide the event, and of the reference and award to be in the

\* In which *Parke, B.*, said—"The lien which an attorney is said to have on a judgment (which is, perhaps, an incorrect expression) is merely a claim to the equitable interference of the court, to have that judgment held as a security for his debt."

discretion of the arbitrator. Several meetings took place, and numerous scientific witnesses were examined. The plaintiff employed a short-hand writer to take down the evidence, and after each meeting a transcript of the notes was made, and a brief copy thereof furnished to the plaintiff's counsel for his guidance at the subsequent meetings. One counsel attended for each party. The arbitrator awarded in the plaintiff's favour, and directed that one moiety of his costs and of the reference and award should be paid by the defendants in each action.

In the plaintiff's bill of costs there were charges for the attendance of the short-hand writer, the transcript of his notes, attendance on him to receive the same, and brief copies for counsel. The Master, however, on taxation, disallowed these items, although intimating that the case was of so much importance that he should have allowed for two counsel, and a motion was made for a rule nisi to review his taxation.

*Alderson, B.*, said—"The plaintiff should have retained a junior counsel or an attorney's clerk, and not a person who is uneducated as regards law. If we were to send the case back to the Master, we should be recognising a principle which is, in my opinion, objectionable, because I think that the costs of a short-hand writer ought not to be allowed. The costs of the attorney's clerk to take the notes is a reasonable charge, but copies ought not to be allowed. Copies of the notes of counsel would not be allowed." The rule was therefore refused.

*Croomes v. Gore*; *Same v. Easton*, 1 Hurlstone and N. 14.

## INNS OF COURT EXAMINATION DISTINCTIONS.

MICHAELMAS TERM, 1856.

Public Examination of the Students of the Inns of Court held at Lincoln's Inn Hall, on the 30th and 31st October, and the 1st November, 1856.

THE Council of Legal Education have awarded to

JOHN PHILIP GREEN, Esq.  
Student of the Middle Temple.

A Studentship of Fifty Guineas per annum, to continue for a period of three years.

WILLIAM F. ROBINSON, Jun, Esq.,  
Student of the Inner Temple.  
SYLVESTER, J. HUNTER, Esq.,  
Student of Lincoln's Inn.  
JOHN BAKER GREENE, Esq.,  
Student of the Middle Temple.

Certificates of Honour of the First Class.

WILLIAM JOHN TAPP, Esq.,  
Student of Lincoln's Inn.  
EUGENE BAZIRE, Esq.,  
Student of the Inner Temple.  
GEORGE EDWARD MARTIN, Esq.,  
Student of Lincoln's Inn.  
EDWARD G. ALSTON, Esq.,  
Student of Lincoln's Inn.  
THOMAS BENDYSHE, Esq.,  
Student of the Inner Temple.

Certificates that they have satisfactorily passed a public examination.

By order of the Council,

(Signed) RICHARD BETHELL, *Chairman*.

Council Chamber, Lincoln's-inn,  
6th November, 1856.

## ADMINISTRATION OF REAL AND PERSONAL PROPERTY.

To the Editor of the Legal Observer.

SIR,—Mr. Humphry, in his able introductory Lecture at the Law Institution on the 8th November, mentioned a distinction taken by the courts of equity in their administration of real and personal property, which, however ingenious may be the reasoning upon which it is founded, and however clear such reasoning may be to a legal mind, is one which cannot be appreciated by non-professional persons, and is certainly opposed to the spirit of modern legislation, and therefore ought not to be any longer suffered to remain.

That distinction is this:—

Equity holds that where there is an express devise of real estate upon trust to pay debts, the trust shall keep alive the debts, and prevent their being barred by the Statute of Limitations, on the principle that no lapse of time will bar an express trust. But in the case of an express bequest of leasehold property upon trust to pay debts, equity holds a different doctrine and the debts are barred.

The reasons upon which these two decisions are founded were clearly and ably explained by the Lecturer, but they consist of well-known refined subtleties which I think ought not to be allowed to work an exception to the general law which governs the limitation of claims.

"The law abhors stale demands," and "Vigilantibus non dormientibus servit lex," are two maxims which ought to be rung in the ears of every law student. Acting upon these two maxims the law had been settled before the Statutes of Limitation were passed that after a certain period an unprosecuted claim should be deemed, either, to have been satisfied, or that the party entitled had waived his right to enforce his claim. The Statutes of Limitation introduced no new system. Equity following the law held a debt to be barred after non claim for the same period as it would be barred at law, except in the case I have alluded to. The same principles of justice and expediency which led to the fixing a limitation at law being equally applicable in equity.

The question then is whether this distinction ought to remain? Is it founded on common sense and common justice? Does the fact of an express devise upon trust make the claim less "stale" than it would otherwise have been—or does it afford any excuse for the creditor's slumbering on his rights—or, bearing in mind that one of the main reasons upon which the system of limitation is founded is the difficulty after a lapse of time of producing evidence to defeat the claim, does it render this evidence more procurable?

If it has not one of these effects the distinction ought not to be allowed to remain. If it has such an effect, why should it not be equally applicable to a bequest of leasehold property?

The tendency of the legislation of the present day is undoubtedly to lessen those distinctions in the rules which govern real and personal property which we have inherited from the feudal system; and, therefore, I think that any subtle distinction like that I have alluded to, which is not founded on any principle of justice, and which tends to encourage "stale demands" which the law abhors, ought no longer to exist in our legal system.

A YOUNG LAWYER.

## SELECTIONS FROM CORRESPONDENCE.

## NOTICE TO QUIT.

In reply to the query of "Civis" in the last number of *The Legal Observer*, if he will be good enough to refer to Woodfall's Landlord and Tenant by Harrison, under title "Notice to Quit," he will discover that "a notice on the 29th of September to quit on Lady day" is a good half year's notice.

The authorities cited are *Doe d. Harrop v. Green*, 4 Exch. 198; *Roe d. Durrant v. Doe*, 6 Bing. 574; *S. C.* 4 Moore and Payne, 391.

J. E.

## NOTES OF THE WEEK.

## LAW APPOINTMENTS.

The Queen has been pleased to appoint *Robert William Keate*, Esq., barrister-at-law, to be Governor and Commander-in-Chief in and over the Island of Trinidad and its Dependencies.—From the *London Gazette* of 7th November.

Mr. *Bruges Fry*, solicitor, has been appointed Registrar of the Axbridge County Court.

## "THE LAW'S DELAY."

On the 11th instant, the Court of Queen's Bench proceeded with the Special Paper. When the first case had been argued, and the second called on, Mr. *J. Wilde*, Q. C., said he was instructed to apply to the court that the case might stand over. He was informed that this would be for the convenience of both sides.

Lord *Campbell* said the court was at all times ready to consult the convenience of the bar, but as no ground was stated for the postponement of this case, the court must proceed.

Mr. *Wilde* said he was not instructed, and had no brief. He knew nothing of the case; only that last night he was requested to make the application.

Lord *Campbell* then called upon the other side, but no counsel appeared. His lordship complained that the court was not treated with proper respect, and ordered the case to be struck out. The next case was then called on, but no counsel appeared. Lord *Campbell* then ordered this case likewise to be struck out of the paper, and that neither of the cases struck out should be re-entered without explanation made to the court. His lordship complained that the business of the court should be so obstructed, more especially as this was the regular Special Paper day.

Mr. *Wilde* assured the court he was not to blame, nor, he believed, was the counsel on the other side.

Lord *Campbell* said he had no doubt that that was the case; but, nevertheless, blame, and very serious blame, rested somewhere. His lordship then gave notice that from this day the court would proceed daily with the cases in the New Trial Paper.

On the following day Mr. *Borill*, who was retained on the other side in this case, gave an explanation of the circumstances, which appeared to be satisfactory to the court.

1866.

DAYS APPOINTED FOR ADMISSION OF ATTORNEYS IN THE COURT OF QUEEN'S BENCH.

Tuesday, 18th Nov. | Saturday, 22nd Nov.  
Tuesday, 25th Nov.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

*Hodgson v. Smithson.* Nov. 6, 1856.

WILL.—CONSTRUCTION.—CHILDREN "LIVING" AT DEATH OF LEGATEE OR TENANT FOR LIFE.

A testator, after giving a life interest to his wife, directed *inter alia* that the other half of his property in the Three per Cent. Consols should, after his wife's death become the property of his cousin, Mrs. M., or in case of her decease that it should be equally divided between her children "living:" Held, confirming the decision of the Master of the Rolls, that the word "living" referred to the death of Mrs. M., and not of the testator or his wife.

THE testator, by his will dated in 1814, after giving a life interest to his wife, *inter alia* directed that the other half of his property in the 3 per Cent. Consols should after his wife's decease become the property of his cousin, Mrs. Morville, of Wakefield, in Yorkshire, or in case of her decease, that it should be equally divided between her children *living*.

The Master of the Rolls having held that the word "living" meant living at Mrs. Morville's death, and not at the death of himself or his wife, this appeal was presented.

R. Palmer and Brodrick Bagshawe; and J. Hinde Palmer for the respondents; Lloyd and H. Fox Britowe for the appellant; Ware for the personal representative.

The Lords Justices said that the testator merely meant to substitute Mrs. Morville's child or children for herself, in case she should die during his wife's lifetime, and dismissed the appeal accordingly, but without costs.

## Vice-Chancellor Kindersley.

*In re Justice Assurance Society, ex parte Ford.* Nov. 7, 1856.

WINDING UP PETITION—PETITION DAY—PRACTICE.

Notice of a petition to wind-up an insurance company was given for November 8, which was not a petition day: Held, that an order would, notwithstanding, be made thereon, and not on a petition subsequently presented.

THIS was a petition to wind-up the above company, which had been provisionally registered, and whose deed of settlement was executed in September, 1855. Judgments had been obtained by creditors against the company, and the offices were closed in August last.

Hastings in support.

Swanston, jun., in support of another petition, sought a similar order on the ground that notice of the first petition was for November 8, which was not a petition day.

The Vice-Chancellor said that the objection could not be entertained, and made the order on the first petition.

*Kialmark v. Kialmark.* Nov. 10, 1856.

SETTLEMENT. — CONSTRUCTION. — BANKRUPTCY BEFORE CONVERSION. — ASSIGNEES.

By a settlement freehold and leasehold property was

settled in trust for the settlor for life, then to his wife for life, with remainder upon trust for sale and to divide the proceeds among his children as therein mentioned, but he directed that if previous to a sale taking place under the trust any son should become bankrupt, the share to which he was entitled should go to his children. One of the sons became bankrupt after the greater portion of the property had been sold but before a small part had been converted, by reason of a question of title: Held, nevertheless, that the children and not the assignees were entitled.

CERTAIN freehold and leasehold property was conveyed to trustees in trust for the settlor for life, and after his decease in trust as to part for his wife for life, and after her death to sell and divide the proceeds among his children equally as therein mentioned, and he directed that in case any son should, previous to a sale taking place under the trust, become bankrupt, the share to which he would have been entitled should go to his children. It appeared that the greater portion of the property had been sold in 1842 and 1843, but that a small part of the leaseholds had not been sold on account of a question of title, and that one of the sons had since become bankrupt. This special case was presented on the question whether his children or his assignees were entitled to such leaseholds.

De Gez for the children; Martindale for a mortgagee; Surrag for the assignees.

The Vice-Chancellor said that the children were entitled to the shares of the unsold leaseholds.

## Court of Queen's Bench.

*Ex parte Patch.* Nov. 6, 1856.

HABEAS CORPUS.—IMPRISONMENT IN JERSEY UNDER GENERAL WARRANT.—LAW OF JERSEY.

A prisoner was in custody in the island of Jersey under a general warrant against the goods and bodies of the debtors of one C. On motion for habeas corpus, which was refused: Held, that the imprisonment must be shewn to be illegal according to the law of the island.

THIS was a motion for a habeas corpus to bring up the body of the applicant, a prisoner in the island of Jersey under a general warrant against the goods and bodies of all debtors of one Courtillier, and the return to the warrant set out that the applicant had been arrested for a debt of £19 2s.

Bullar in support on an affidavit that the imprisonment was illegal according to the law of Jersey.

The Court said it was not shewn that the imprisonment was contrary to the law of Jersey, and the debt was not denied. The application would be refused.

*Swinfen v. Swinfen.* Nov. 10, 1856.

ATTACHMENT.—SUBSTITUTED SERVICE OF RULE NISI ON ATTORNEY.

The service of a rule nisi for an attachment will not be substituted on the party's attorney, although it was believed she had withdrawn herself for the

*purpose of avoiding service, and a copy of the rule had been left.*

This was a motion that service of a rule nisi for an attachment against Mrs. Swinfen might be deemed sufficient on her attorney. It appeared that no information respecting her could be obtained at her residence, and it was believed she had withdrawn herself for the purpose of avoiding service, and a copy of the rule had been left.

*Attorney-General in support.*

The Court said that application could not be granted, but enlarged the rule.

*Ex parte Horry.* Nov. 10, 1856.

CRIMINAL INFORMATION FOR LIBEL—ACTION—INDICTMENT.

*A rule nisi for a criminal information for libel published in a letter to the Times imputing gross misconduct to the applicant as a barrister, was refused where he had in a subsequent letter entered into a defence of his conduct.*

*Held, that the refusal of a criminal information is not a bar either to an action or an indictment.*

THIS was a motion for a rule nisi for a criminal information against Mr. Rose, lately one of the undersheriffs of the city of London, for a libel published in a letter to the *Times*, imputing gross misconduct to the applicant as a barrister.

*Sir F. Thesiger in support.*

The Court having refused the rule on the ground that the applicant had, in a subsequent letter to the *Times*, entered into a defence of his conduct, said the refusal was not a bar either to an action or an indictment.

Court of Common Pleas.

*Finney v. Lord Brownlow Cecil.* Nov. 7, 1856.

PROMISSORY NOTE.—ACTION BY INDORSEE AND HOLDER.—PLEA OF DISCHARGE AS INSOLVENT.—DESCRIPTION IN SCHEDULE.

*An insolvent debtor described a promissory note in his schedule as a bond conditioned for payment of £1000, with interest at 5 per cent. until payment to one James J. L., although at the time he knew the plaintiff was holder and indorsee. A rule was refused to set aside the verdict for the plaintiff in an action on the note upon the defendant's plea of his discharge under the Insolvency Act.*

THIS was a motion for a rule nisi to set aside the verdict for the plaintiff and to enter it for the defendant in this action, on a promissory note for £1000, payable to one John Jackson Lee, and drawn by the defendant in 1849. The defendant pleaded his discharge under the 1 & 2 Vic. c. 110, ss. 69, 75, and it appeared that he had described the note in his schedule as £1000, the amount of his bond given by him to his creditor conditioned for payment with interest at 5 per cent. till the principal was paid, and the payee's name was stated to be James, instead of John, Jackson Lee. It, however, appeared that the defendant knew before his insolvency that the present plaintiff was the indorsee and holder.

*Byles, S. L. in support.*

The Court refused the rule.

Court of Exchequer.

*Wilkinson v. Frost.* Nov. 6, 1856.

ACTION FOR TRESPASS AND FALSE IMPRISONMENT—JUSTIFICATION OF COMMISSION OF FELONY.—REASONABLE AND PROBABLE GROUND.

*The defendant justified in an action for trespass and false imprisonment that the plaintiff had committed two felonies. It appeared that one was proved, and that in respect of the other the plaintiff could give no satisfactory explanation: Held, refusing a rule to set aside the verdict for the defendant, that there was reasonable and probable ground for giving the plaintiff in custody.*

THIS was a motion for a rule nisi to set aside the verdict for the defendant, and for a new trial of this action, which was brought to recover damages for trespass and false imprisonment. It appeared on the trial before Pollock, Lord Chief Baron, that the plaintiff was a porter in the employment of the defendant, who was a silk-mercer, and that it was his duty to sleep on the premises to protect the goods, and that he had informed the defendant that he had examined a parcel of silk and found it to be deficient by reason of a portion having been cut out of the middle, and sewn up again. The missing silk was afterwards found in the plaintiff's boxes, and also a chain and seal belonging to the defendant. It was conceded that a felony of the silk was proved, but not of the chain and seal, although the plaintiff could not recollect the circumstances under which he became possessed of them. The defendant pleaded a justification, setting out the two felonies, and that he had reasonable and probable cause for giving the plaintiff into custody, and, under the learned Chief Baron's direction, a verdict passed for the defendant.

*Ballantine, S. L., in support.*

The Court said that there was sufficient evidence of a reasonable and probable cause for giving the plaintiff into custody, without the circumstances of the discovery of the chain and seal, and that the fact of the commission of one felony by the plaintiff was sufficient ground on which the defendant might reasonably be influenced in forming a probable judgment of the plaintiff's guilt. The rule would therefore be refused.

*Roberts v. Grand Trunk Railway Company of Canada.* Nov. 7, 1856.

FOREIGN CORPORATION.—ACTION AGAINST.—SERVIT OF WRIT—IRREGULARITY.

*Held, that a foreign corporation may be sued in this country, although it has no existence here, and the court accordingly refused to set aside a writ of summons against it as void.*

*Quære, how service of such writ is to be effected in order to be valid?*

THIS was a motion for a rule nisi to set aside a writ of summons, and all subsequent proceedings, in this action, which was brought against the above railway company, with a board of directors and management in Canada, but which had no power to act in England. The writ had been served on the secretary, who happened to be in this country.

*Bovill in support.*

The Court said that a foreign corporation might be sued here, although the difficulty was how to serve the writ. The service on the secretary was irregular, and a rule nisi would be granted to set it aside and the subsequent proceedings, but not the writ itself.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, NOVEMBER 22, 1856.

### THE NEW CHIEF JUSTICE OF THE COMMON PLEAS AND THE LAW OFFICERS OF THE CROWN.

At length Sir Alexander Cockburn, the late Attorney-General, has been induced to accept the high judicial position of Lord Chief Justice of the Court of Common Pleas, with its liberal salary and large patronage. The career of Sir Alexander has been somewhat rapid. He was a fellow of Trinity Hall, Cambridge, and was called to the bar by the Honourable Society of the Middle Temple on the 6th February, 1829. He selected the Western Circuit; soon rose to eminence, and was made a Queen's Counsel in 1841. He was a bencher of the Middle Temple, and one of the municipal commissioners. In July, 1850, he became Solicitor-General, and in March, 1851, he was promoted to the office of Attorney-General. In the month of February, 1852, a change of administration took place. The Earl of Derby became Prime Minister, Lord St. Leonards Chancellor, and Sir Frederick Thesiger, and Sir Fitzroy Kelly resumed their former offices of Attorney and Solicitor-General. In December, 1852, Lord Derby's administration resigned, Lord Aberdeen became Premier, Lord Cranworth was created Chancellor, Sir Alexander Cockburn was re-appointed Attorney-General, and Sir Richard Bethell received the appointment of Solicitor-General, previously held by Sir William Page Wood, under Lord John Russell's administration.

Sir Alexander was first returned to Parliament for the Borough of Southampton in the year 1847. He was Recorder of Bristol, a lucrative appointment formerly held by Sir Charles Wetherell.

The late Attorney-General was much admired for the clearness with which he stated his case to the court or jury, and the logical force with which he drew his conclusions. He was not only a close reasoner, but an eloquent advocate. He successfully conducted many important trials, and the great criminal case of Palmer will ever remain a memorable example of consummate skill and excellent judgment.

### THE NEW ATTORNEY-GENERAL.

Sir Richard Bethell, who has succeeded to Vol. LII. No. 1,498.

the Attorney-Generalship, we are informed was born at Bradford, Wiltshire, in the year 1800; his father Dr. Bethell was a physician of some eminence residing at Bristol, and was descended from the ancient Welch family of "Ap Ithell." Sir Richard received the rudiments of his education at Bristol, and at the early age of fourteen proceeded to Wadham College, Oxford. There he attained the first class in classics and the second in mathematics. He took the degree of Bachelor of Arts at the age of eighteen, and afterwards became a private tutor at Oxford, in which capacity he was very eminent. He was called to the bar by the benchers of the Middle Temple in November, 1823, and practised with distinguished success in the Court of Chancery. In 1840 he was made a Queen's Counsel, and in December, 1852, was promoted to the post of Solicitor-General.

Sir Richard Bethell is Vice-Chancellor of the County Palatine of Lancashire. He was first returned to Parliament for the Borough of Aylesbury in April, 1851.

At the time we write the vacant office of Solicitor-General has not been filled up.

### THE BANKERS' DRAFTS ACT.

It has been generally supposed that the act "to Amend the Law relating to Drafts on Bankers," 19 & 20 Vic. c. 25, will have the effect of preventing bankers' cheques from being available in the hands of persons not entitled to them, and will afford better security than previously existed to the drawers and payees of these negotiable instruments. In proceeding to review the effect of the statutes of the last session, Mr. *Malcolm Kerr*, in his Second Lecture at the Incorporated Law Society, stated, that after much consideration he had arrived at the conclusion that the statute had not altered the law in any respect, but had simply made that *statute law* which had previously been held to be the law by all the courts at Westminster.

The Lecturer, in the first place, described the nature of the negotiable instrument in question. He said:—

A cheque on a banker is, in the eye of the law, an inland bill of exchange, payable on demand, and would, therefore, require a stamp like any other bill

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of exchange, were it not that, on the ground of its being for the convenience of commerce, the Legislature has seen fit to exempt such instruments from the operation of the stamp laws.

This exemption was first created by the statute 55 Geo. 3, c. 184, which exempted from stamp duty all drafts or orders for the payment of any sums of money to the bearer on demand, and drawn upon a banker within ten miles of the place where such draft should be issued. This statute also required that the draft should specify the place where it was issued, and should bear date on or before the day on which it was issued. The limit of ten miles imposed by this statute was extended to fifteen miles by the statute of 9 Geo. 4, c. 49, s. 15.

The law as to cheques on bankers was regulated by these statutes till the passing of the act 16 & 17 Vic. c. 69, one of Mr. Cardwell's measures for simplifying and improving the stamp laws. That act provided in the schedule that a "draft or order for the payment of money to the bearer or order on demand" should be liable to a stamp duty of one penny; but it exempted "all drafts or orders for the payment of money to the bearer on demand drawn upon any banker now by law exempt from stamp duty."

1. A cheque must specify truly the place where it is drawn. Therefore, when a person residing four miles from the town of Llanelly drew a cheque as from Llanelly itself, it was held to be void for want of a stamp (*Walters v. Brogden*, 1 Y. and J. 457). When a cheque, however, purported to be drawn at the "Dorchester Old Bank," which words were printed on it, this was held a sufficient designation of the place in the absence of proof that it was not drawn there (*Strickland v. Mansfield*, 8 Q. B. 675).

But where a cheque was in these words: "Messrs. Knapp, bankers, Abingdon—pay to Mr. Hicks or bearer," it was held that it did not appear sufficiently that it was drawn at Abingdon to satisfy the statute (*Bossart v. Hicks*, 3 Ex. 1; and see *Bond v. Warden*, 1, Collyer, 583); and Lord Ward's case, where a cheque by a railway company for £4,000 was held void because it was headed with the name of the railway company (2 De Gex M'N. and Gord. 750).

2. A cheque must not be post dated. Therefore, a draft delivered before the day of the date thereof, though intended not to be used till that day, is void (*Allen v. Reeves*, 1 East, 485).

It is an every-day practice for people to issue a post-dated cheque, and to ask the person to whom it is given to hold it over for a day or two. The case quoted will show that if the drawer is dishonest enough to stop payment of his cheque, no action will lie upon it. But if paid without knowledge of the false date, the payment is good (*Watson v. Poulson*, 16 Jur. 1111). It is the knowledge of the defect which voids the transaction; therefore, where the defendants, knowing a cheque to have been post-dated, and that the drawers were insolvent, presented it for payment on the day it purported to be drawn, and the bankers, having no funds of the drawers, paid it, not knowing the fact of its being post-dated, or that the drawer was insolvent, it was held that they were entitled to recover the money back as money had and received to their use (*Martin v. Morgan*, Gow. 128).

3. A cheque must be drawn on a banker. Thus, a cheque drawn on "Mr. Castleman, Bricklayer, Camberwell," is a bill of exchange, and requires a stamp. As a cheque it is void and cannot be given

in evidence to prove a payment or a set-off by or on behalf of the drawee (*Castleman v. Ray*, 2 Bos. and Pul. 388).

4. A cheque must be drawn on a banker within fifteen miles of the place where it is issued. The two cases already quoted—the one, when a cheque was drawn on bankers at Abingdon, and the other where the Oxford Railway Company headed their cheque in the name of the railway—are illustrations of this requisite. But there is a case more exactly to the point—*Swan v. Bank of Scotland*, 10 Bligh, 627.

This fourth requisite was considered to be complied with if the cheque was in fact issued within that distance. If, therefore, a cheque was to be sent to a friend in Oxford or Scotland to avoid the payment of the penny stamp, a cheque might be got from a friend, which, by being delivered, would be issued here, and then it might be sent to Oxford or Scotland. This was clearly an evasion of the law, and it has accordingly been prevented by the statute 17 & 18 Vic. c. 83, s. 7, and which enacts that such cheques shall not, unless stamped, be remitted or sent to, or negotiated or circulated at, any place beyond fifteen miles from the place where it is payable. Any person sending an unstamped cheque in defiance of this enactment, or any person receiving the same in payment or circulating it, forfeits a penalty of £50. But by sec. 10 of the same statute any person receiving a cheque thus unlawfully issued may put a stamp upon it, cancelling it at the same time by writing his name or initials, and the illegal cheque then becomes a valid and negotiable order.

5. The fifth requisite of a cheque is that it be drawn for a sum of money; that is, it must not direct the payment to be made in bills or notes. This is expressly provided by the statute 55 Geo. 3, c. 184. No cheque can be drawn for a sum less than twenty shillings. Such a cheque is not only void, but the issuing or negotiating such an instrument subjects the offender to a penalty of £20. This is expressly provided by the statute 48 Geo. 3, c. 88, s. 3, one of the many statutes connected with banking and the currency. At one time, by the statute 17 Geo. 3, c. 80, no cheque could be drawn for less than £3, and now by the 7 Geo. 4, c. 6 (which repeals an act that repealed the 17 Geo. 3) nothing in that act shall extend to a draft drawn by a man on his own banker for money held by that banker to the use of the drawer. This enactment by way of repeal seems to lead to this consequence, that a cheque for less than £5 is void if it so happen that the drawer has no balance at his bankers at the time.

6. A cheque to be exempt from stamp duty as a draft must be payable to bearer;—if it is made payable to a person or by order, it is, in point of law, a bill of exchange. Therefore, where a man was indicted for stealing a check payable to D. F., and not to bearer, it was held by the twelve judges that not being within the exception of the Stamp Act, it ought to have been stamped as a bill, and not being so was not a bill, it being consequently neither a "bill" nor a "cheque" was not a valuable security, which might be the subject of larceny under 7 & 8 Geo. 4, c. 29, s. 5 (*Rex v. Yates*, 1 Ryan and Mood. C. C. 170).

7. It is lastly requisite that it shall be payable on demand—otherwise it is not within the exception of the Stamp Act. The recent statutes, giving a legal effect to the operation of crossing cheques, applies also to orders on bankers, which differ from cheques only in this, that being stamped with a penny stamp they may be made payable to order, and may be issued

anywhere. A cheque properly so called payable to bearer is transferred by mere delivery; a draft on a banker payable to order is only transferred by the indorsement of the payee, but once indorsed in *blank* it becomes in all respects a cheque. In other respects the law is the same as to both instruments.

The cheque then being drawn in compliance with the seven requisites, is, in legal effect, a bill drawn on a banker. But it is a bill which requires no acceptance.

The drawee of an ordinary bill of exchange incurs no liability until he has accepted. But a banker is by the *custom of merchants* bound to pay a cheque within a reasonable time after money has come to his hands. He is, in short, bound to pay it on presentment if he has funds of the drawer. The law on this subject is fully stated in *Marzetti v. Williams*, 1 B. and Ad. 416. That was an action of tort for the banker's breach of duty in dishonouring a cheque, having funds to meet it, in which the plaintiff recovered nominal damages. But it has since been held that in an action by a trader against his banker for dishonouring his cheque, having funds to meet it, *substantial damages* may be recovered without proof of any actual damage (*Hollis v. Steward*, 14 C. B. 595).

The Lecturer, after expounding the law relating to the prompt presentation of a banker's cheque, came to the consideration of the nature of a negotiable security, and the right of a *bond fide* holder to recover payment, although it had previously been obtained by fraud or larceny. Several cases were cited, particularly *Miller v. Race*, 1 Burr. 452; *Grant v. Vaughan*, 3 Burr. 1516; the conclusion to be drawn from which was that—

A negotiable instrument (and of course a cheque or draft) is one which is transferable by any person holding it, so as by delivery thereof to give a good title to any person *honestly acquiring it*. This is the definition of Chief Justice Abbott in *Gorgier v. Mievile*, 8 B. and C. 45. Whenever, therefore, an instrument is such that the legal right to the property secured thereby passes from one man to another by the delivery thereof, it is, properly speaking, a negotiable instrument, and the title to it will vest in any person taking it *bond fide* and for value, whatever be the defects in the title of the person transferring it. An instrument, consequently, which by the custom of trade is transferrable like cash, by delivery, and is also capable of being sued upon by the holder, is entitled to be called a negotiable instrument. Bills and notes, cheques and drafts, payable to bearer, or payable to order, and indorsed in *blank*, are therefore negotiable instruments—they pass like money, and may be sued on by the holder.

It follows that when an instrument is made payable to bearer, or being originally made payable to order, has been indorsed in *blank* by the payee, no subsequent special indorsement can restrain its negotiability (*Smith v. Clarke*, Peake N. P. 225; *Walker v. Macdonald*, 2 Ex. 527).

The recent case of *Bellamy v. Majoribanks*, 7 Exch. 389, was next noticed, and Mr. Kerr observed that—

The result of this case is, that if any man gets a cheque crossed to any one banker, he may strike out that banker's name, and put in the name of his own banker, for the sole effect of the crossing is to make

the banker on whom it is drawn pay the contents through a banker. The crossing in no way restrained the negotiability of the cheque, and therefore any person taking it *bond fide* for value, acquires a right to the contents just as Miller, who took the stolen bank note honestly, was held entitled to the contents in *Miller v. Race*, and as Grant, who gave cash for the lost cheque, was held entitled to enforce payment of it in *Grant v. Vaughan*.

Then the decision of the Queen's Bench in *Carlton v. Ireland*, 5 El. and Bl. 765, is precisely the same as the decision of the same court nearly a century ago in the same circumstances.

The Lecturer then read the recent statute, and asked whether this enactment has done anything to restrain the negotiability of the cheque. It provides that the effect of the crossing is to make it payable only to a banker. Is that to prevent any one from *bond fide* taking a crossed cheque in payment of his bill. If it is to do so, then a cheque can no longer be a "negotiable instrument." "The crossing (in the language of Lord Campbell) cannot in the nature of things at once leaving it payable to bearer and also make it not payable to the bearer, and the effect of the statute would seem, therefore, simply to give a legislative sanction to what was previously the 'custom of merchants,' and it may be added, the law of England.

These instruments have long been given in payment of a debt or other demand, for a cheque, unless dishonoured, is considered payment (*Pearce v. Davis*, 1 M. and R. 865). But the mere production of a cheque drawn by the debtor in favour of the creditor and appearing to have been paid by the banker is no evidence of payment (*Egg v. Barnett*, 3 Esp. 196). If it were, we might all draw cheques in favour of our creditors and then plead payment after we had ourselves drawn the money. It is therefore necessary to show that the cheque passed through the creditor's hands (*Aubert v. Walsh*, 4 Taunt. 298); and if the cheque be dishonoured, or the banker fails, the creditor may resort to his original right of action (*Everett v. Collins*, 2 Camp. N. P. 516), just as the owner of goods for which a bill has been given may sue for the price of the goods if the bill is not paid at maturity (*Tapley v. Martens*, 8 T. R. 451).

A cheque is payment, but yet it is not evidence of a debt due from the drawer; as money lent, for instance (*Pearce v. Davis*, 1 Mood. and Rob. 865). Nor is it evidence of the money having been advanced by the banker to the customer (*Fletcher v. Manning*, 12 M. and W. 571). It is, on the other hand, *prima facie* evidence of repayment by the banker, and in the case of a private person of payment of a previous claim, and if it is *prima facie* evidence of one state of circumstances, it cannot of course be evidence of the converse.

A cheque is an authority to the banker of the drawer to pay the amount of it. The drawer's death before payment is a countermand of that authority, but still the payment is good if made before notice of the death (*Tate v. Hilbert*, 2 Ves. Jun. 118). It is an authority to pay the amount for which it is drawn. If, therefore, the cheque be fraudulently altered and increased in amount the banker must bear the loss (*Hall v. Fuller*, 5 B. and C. 750); unless the drawer so carelessly and negligently fill up the cheque as to invite the forgery (*Young v. Grote*, 4 Bing. 253).

Being an authority countermanded by death a cheque cannot be the subject of a gift by a will (*Tate v. Hilbert*, 2 Ves. Jun. 111). It must be

delivered, and cannot, it would appear, be delivered by the executor, so as to transfer the property (*Bromage v. Lloyd*, 1 Ex. 32); but a payment by the banker before notice of the death, equity will hold to be good.

It may be observed, however, that the new act settles the question that a crossed cheque must be paid through some banker, and that the crossing cannot be altogether struck out and the amount received by any other person.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INCOME AND LAND TAXES.

(19 & 20 Vic. c. 80).

1. Relief from income tax to landlords in Scotland in respect of public burdens not paid by landlords in England.
2. Allowances to clerks to Income Tax Commissioners under recited acts repealed, and other allowances granted in lieu thereof.
3. Section 2 of 16 & 17 Vict. c. 117, relating to redemption of land tax repealed.
4. Parishes or places may be united for the more convenient execution of the acts relating to the land tax, &c.

The following are the title, preamble, and sections of the act:—

An Act to grant Relief in assessing the Income Tax on Lands in Scotland in respect of certain Public Burdens charged thereon; to alter and regulate the Allowances to Clerks to the Commissioners of Income Tax; and to amend the Laws relating to the Land, Assessed, and Income Taxes, and the Redemption and Purchase of the Land Tax.

[29th July, 1856].

WHEREAS it is expedient to grant relief in assessing the income tax on lands in Scotland in respect of certain public burdens charged thereon, and to alter and regulate the allowances to clerks to the Commissioners of Income Tax, and also to amend the laws relating to the redemption and purchase of the land tax: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Whereas the rules contained in the act passed in the Fifth and sixth years of her Majesty's reign, chapter thirty-five, for estimating the annual value of properties described in schedules A. and B. of the acts relating to the income tax, in order to the assessing and charging of the same under the said acts, direct that where any landlord shall be subject to any covenant or agreement to pay or satisfy out of the rent reserved parochial rates, taxes, and assessments which by law are a charge on the occupiers of lands, the annual value of such lands shall be estimated for the purpose aforesaid, exclusive of such rates, taxes, and assessments: And whereas certain public rates and taxes which in England are by law a charge on the occupiers of lands are in Scotland charged on the landlords, and other public burdens, the like whereof do not exist in England, are also

charged on the landlords in Scotland; and it is expedient to afford relief to landlords in Scotland with respect to the charge of the income tax upon them in regard to all such cases as aforesaid: Be it enacted, that where it shall be made to appear to the satisfaction of the Commissioners of Inland Revenue that the landlord of lands in Scotland is by law charged with any public rates, taxes, or assessments which in England are by law a charge on the occupiers of lands, or that such landlord is by law charged with any public rates or taxes or other public burdens the like whereof are not chargeable on lands in England, the said commissioners shall cause such relief to be given to the said landlords in Scotland as shall be just and reasonable in regard to the charge of the income tax on them in respect of an annual value exceeding by the amount of such rates, taxes, assessments, and public burdens the charge of the said tax on landlords in England, and such relief shall be given either by abatement from the assessment, or by repayment of the tax, and under such rules, regulations, and directions as the said commissioners shall think fit to make or give in that behalf.

2. And whereas by section one hundred and eighty-three of the said recited act certain allowances were directed to be granted to the clerks of the respective commissioners of income tax for the due performance by the said clerks of the duties of their offices respectively, and by an act passed in the sixteenth and seventeenth years of her Majesty's reign, chapter thirty-four, section fifty-seven, certain other allowances were directed to be granted to the said clerks in lieu of the said former allowances: Be it enacted, that the said allowances directed to be granted by the said recited acts, or either of them, to the clerks of the respective commissioners of income tax shall be and the same are hereby repealed as to all assessments made or to be made for any year commencing from or after the fifth day of April one thousand eight hundred and fifty-six, and in lieu thereof there shall be granted the following allowances; that is to say, the clerk of the respective commissioners who shall duly perform the duties of his office within the respective times limited by law in that behalf, and shall have borne and sustained the incidental expenses mentioned in the said first-recited act, shall, by warrant under the hands of the said commissioners, have and receive from the respective officers for receipt twopence in the pound on so much of the net amount of the sums assessed and charged in the duplicates of assessment for any year commencing as aforesaid, after all appeals heard and determined, and all just reductions, abatements, and discharges made from such assessments and duplicates respectively, as will give to such clerk an allowance not exceeding five hundred pounds for any one year, and at the rate of one penny in the pound on the remainder (if any) of the said net amount: Provided always, that it shall be lawful for the Commissioners of her Majesty's Treasury, in any case in which they shall see fit, to cause such further allowance to be made to any such clerk as aforesaid of any sum not exceeding one penny in the pound on the amount of such part of the gross assessment as shall have been discharged on occasion of claims for exemption or abatement made or allowed on the ground of income being below one hundred and fifty pounds and one hundred pounds a year respectively as the said last-mentioned commissioners shall, on consideration of the extent and population of the district, and the number of such claims, think proper to direct; and the certi-

decree of the Commissioners of Inland Revenue shall be an authority to the officers for receipt respectively to pay such further allowance as last mentioned.

3. And whereas by an act passed in the sixteenth and seventeenth years of her Majesty's reign, chapter one hundred and seventeen, section two, it is enacted, that upon the completion of any contract entered into after the passing of the said last-mentioned act for the redemption of land tax, and upon the transfer or payment of the consideration for the same, the messuages, lands, tenements, or hereditaments comprised in such contract shall be wholly freed and exonerated from the land tax charged thereon, and from all further assessments thereof, and from any yearly term, rent, or rentcharge in respect of any consideration for such contract: Be it enacted, that the said last-recited enactment, so far as regards any such contract as aforesaid to be entered into at any time after the passing of this act, shall be and the same is hereby repealed.

4. And for the more convenient execution of the acts relating respectively to the land tax, the assessed taxes, and the income tax, be it enacted, that it shall be lawful for the commissioners acting in the execution of the acts relating to the land tax for any division, at any meeting of such commissioners convened for that purpose, if and as they shall see fit (subject as herein provided), to unite any two or more parishes, townships, tithings, hamlets, or places (extra parochial or otherwise), for the purpose of the more convenient execution of the said several acts relating to the said taxes respectively, and to certify such union to the Commissioners of Inland Revenue, for the approbation of the Commissioners of her Majesty's Treasury; and if the said last-mentioned commissioners shall approve of such union, such approbation shall be certified by the Commissioners of Inland Revenue to the respective commissioners acting in the execution of the several acts relating to the several taxes aforesaid respectively; and thereupon, and from and after such time as shall be fixed by such last-mentioned certificate, such united parishes, townships, tithings, hamlets, or places shall, for all the purposes of the said several acts and taxes respectively, be considered as one parish or place only, and the said respective commissioners shall execute the said acts with respect to such united parishes, townships, tithings, hamlets, or places as if the same were one parish or place only: Provided always, that nothing herein contained shall extend to authorise any alteration of the quota of land tax now chargeable by law on any parish or place.

#### COMMONS INCLOSURE (No. 2).

(19 & 20 Vict. c. 106.)

1. Inclosures mentioned in the schedule may be proceeded with.

2. Short title.

An Act to authorise the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.

[29th July, 1856.]

WHEREAS the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and Improvement of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the schedule to this act, and the requisite consents thereto have been given since the date of their Eleventh Annual General

Report: And whereas the said commissioners have by a special report certified their opinion that such proposed inclosures would be expedient; but the same cannot be proceeded with without the previous authority of Parliament: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. That the said several proposed inclosures mentioned in the schedule to this act be proceeded with.

2. In citing this act in other acts of Parliament and in legal instruments it shall be sufficient to use either the expression "The Second Annual Inclosure Act, 1856," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

#### SCHEDULE to which this act refers:—

Inclosure.	County.	Date of Provisional Order.
Newport.....	Essex.....	17th Oct. 1855.
Hennington Hill.....	Somerset.....	14th Feb. 1855.
East Meon.....	Southampton.....	28th Feb. 1855.
Wintershill Common.....	Southampton.....	10th Jan. 1855.
Llysven Commonable Fields.....	Brecon.....	19th Mar. 1855.
Llysven Common.....	Brecon.....	19th Mar. 1855.
Mynyddfermach.....	Brecon.....	19th Mar. 1855.
Hatherton.....	Stafford.....	7th Feb. 1855.
Letterston.....	Pembroke.....	17th April 1855.
South Creaks.....	Norfolk.....	1st May 1855.
Calstock.....	Cornwall.....	2nd June, 1855.
Winterburn Moor.....	York.....	22nd May 1855.
Brixham.....	Devon.....	1st May 1855.
Chateau Green.....	Stafford.....	8th May 1855.
Brandaby.....	York.....	8th May 1855.
Lynton.....	Devon.....	22nd May 1855.
Linn otherwise Lyn.....	Devon.....	22nd May 1855.
Filton.....	Gloucester.....	8th May 1855.
Aston and Bennington.....	Hertford.....	24th Jan. 1854.
Bennington, Aston, and Little Munden.....	Hertford.....	1st May 1855.
Appleton Roebuck.....	York.....	8th May 1855.
Entwisle.....	Lancaster.....	1st May 1855.
Framfield Manor.....	Sussex.....	27th May 1855.
Liss.....	Southampton.....	18th Jan. 1855.
Hughenden.....	Bucks.....	5th June 1855.
Alwinton.....	Northumberland.....	26th June 1855.
Glyngynwidd and Glynbrochan.....	Montgomery.....	3rd April 1855.
Llangeltho Common.....	Cardigan.....	26th June 1855.

#### COURT OF CHANCERY (IRELAND) RECEIVERS.

(19 & 20 Vict. c. 77).

1. Interpretation of terms.
2. Court to have a discretion in appointing receivers.
3. No receiver to be appointed where sum due shall not exceed £150, &c.
4. Act not to extend to appointment of receivers for payment of tithes.
5. Act of Parliament of Ireland, 11 & 12 G. 3, c. 10, repealed.
6. Power to court to direct sale of estate at any stage of suit.

The following are the title, preamble, and sections of the act:—

An Act to amend the Law and Practice of the Court of Chancery in Ireland in relation to the Appointment of Receivers over Real Estate, and to expedite the Sale of Estates in the said court.

[29th July, 1856.]

Parliament holden in the 15th and 16th years of the reign of her present Majesty, intituled "An Act to extend the Provisions of 'The Trustee Act, 1850,'" in all cases where any decree or order shall have been made by the Court for the sale or conveyance of any lands.

5. Applications on behalf of infants under the 12th, 16th, and 17th sections of the act of Parliament passed in the 1st year of the reign of King William the Fourth, chapter 65, in all cases where the infant is a ward of the Court of Chancery, or the administration of the estate of the infant, or the maintenance of the infant is under the direction of the Court.

In the 4th of these orders, the word "lands" is to be construed according to the definition and interpretation thereof contained in the 2nd section of "The Trustee Act, 1850."

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"Besides these cases, the work is interspersed with a variety of what I hope may be deemed practical information, together with new Forms and Precedents, &c., &c.

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#### OF HABEAS CORPUS AD TESTIFICANDUM—OF WITNESS IN TWO ACTIONS.

In an action brought by the plaintiff, who was then confined in Warwick gaol a prisoner for debt, against the sheriff of Warwickshire, for trespasses committed by him and his officers in arresting the plaintiff under a writ of *ca. sa.*, the plaintiff was a material witness on his own behalf. A writ of *habeas corpus ad testificandum* was sued out, under which the plaintiff was brought up to attend the trial, and he was present at the same, although not called upon to give evidence. He obtained a verdict, with £25 damages.

There was another action tried on the same day, brought by him against the same defendant for trespasses in the execution of a *fi. fa.*, in which action the plaintiff was called and gave evidence. The defendants obtained a verdict. The Master, in taxing the costs of the first action, allowed to the plaintiff all the costs of the writ of *habeas corpus*, whereby he was enabled to attend both trials.

On a rule *nisi* to review the taxation, Pollock, Lord Chief Baron, said:—"A party who fails in a cause must bear the expense of his failure. The rule is, if a witness attends in one cause only, he will be entitled to the full allowance. If he attend in more than one cause he will be entitled to a proportionate part in each cause only. If the expense of bringing up this party as a witness was £10, a proportion—one-half—must be allowed."

*Griffin v. Hoskyns*, 1 Hurlstone and N. 95.

### NOTES ON THE COMMON LAW PROCEDURE ACT.

#### SETTING ASIDE JUDGMENT IN ACTION AGAINST BRITISH SUBJECT ABROAD—LACHES.

A WRIT of summons issued under the 15 & 16 Vic. c. 76, s. 18, bearing the indorsement for service on a British subject out of the jurisdiction of the superior courts, but not any special indorsement of the nature or particulars of the plaintiff's claim, was served in Guernsey on November 8, 1855; and the defendant not having appeared, *Martin*, B. made an order at chambers that the plaintiff should be at liberty to proceed. Judgment was signed on November 28. It appeared that the defendant had no notice of the proceedings until execution was levied on him by process out of the Guernsey Court, and on March 12, 1856, he applied by summons to set aside the proceedings on the ground that the cause of action did not arise within the jurisdiction of the court. *Crompton*, J. having refused to make any order on the ground that the defendant should have applied at an earlier period, and a motion was now made for a rule to set aside the judgment, and all subsequent proceedings.

*Martin*, B. said—"No rule will be granted. The defendant should have come within a reasonable time. By Reg. Gen. Hil. Term, 1853, 185, no application to set aside process or proceedings for

19th and 20th years of her present Majesty, chapter 120, intituled "An Act to facilitate *Leases and Sales of Settled Estates*," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say:

1. Every petition under the act, and every public and private notice required by the act must set forth the name, address, and description of the petitioner, and also a place in London, Westminster, or the borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with any order of the court or notice relating to the subject of the petition.

2. All petitions and notices, and also all affidavits and other proceedings under the act are to be entitled, in the matter of the act, and in the matter of the property in question, mentioning the county and parish or place in which it is situate, and describing it by general terms, and every such petition shall be marked with the words Master of the Rolls, or with the title of the Vice-Chancellor before whom it is intended to be heard.

3. After any such petition has been presented, application may be made *ex parte* and in chambers to the judge before whom it is intended to be heard for directions in what newspapers the notices required by the act are to be inserted.

4. Motions under the twentieth section of the act may be made *ex parte* within seven clear days after the publication of the advertisement which may be last inserted in the newspaper, but not later (except by special leave of the court), and every order made on any such motion must be served on the petitioner within four days after the making thereof.

5. If the person or body corporate obtaining such order shall require a copy of the petition, such person or corporation shall at the time of serving such order make a written application to the petitioner for such copy, with an undertaking to pay all proper charges for the same.

6. Within two clear days after such application a copy of the petition shall be ready to be delivered, and shall be delivered on demand, and on payment for the same after the rate of fourpence per folio.

7. No petition under the act shall be set down for hearing until after the expiration of twenty-one days from the publication of the last of the advertisements.

8. Upon every application under the act the court must be satisfied by sufficient evidence that no such previous application to Parliament as is mentioned in the twenty-first section of the act has been made and rejected or reported against.

9. On every application under the act for authority to sell, the court must be satisfied by sufficient evidence who are the parties interested in the estate, whose consent is required by the act, and what are the circumstances which render the proposed sale proper and expedient.

10. In all cases in which under the provisions of the thirty-sixth section of the act it shall be necessary to obtain the several directions of the court for any application to the court or any consent to such application, such special directions may be obtained *ex parte* by summons at the chambers of the judge to whose court the application may be intended to be made or may have been made.

11. Every order of the court made in pursuance of the powers conferred on it by the act shall specify in what document or documents (if any), the notice referred to by the twenty-second section of the act shall be placed or endorsed, and the judge may, if he

thinks fit, require that such document or documents so endorsed shall be produced in court for his inspection, and in case of any such order relating to lands in a register county or district, the court may order a duplicate or a memorial of the same to be registered.

12. The fees and allowances to all officers and solicitors of the court in respect of the matters under the act shall be such fees and allowances as by the present practice of the court they are entitled to take and charge for business of a similar nature.

## NEW ORDERS IN CHANCERY.

### BUSINESS AT THE JUDGES' CHAMBERS.

*Wednesday, 12th November, 1856.*

THE Right Honourable Robert Monsey, Lord Cranworth, Lord High Chancellor of Great Britain, with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, and the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir William Page Wood, doth hereby, in pursuance of the act passed in the session of Parliament, holden in the 15th and 16th years of the reign of her present majesty, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Dispatch of Business in the said Court," and of the act passed in the session of Parliament holden in the 18th and 19th years of the reign of her present Majesty, intituled "An Act to make further Provision for the more speedy and efficient Dispatch of Business in the High Court of Chancery, and to vest in the Lord Chancellor the Ground and Buildings of the said Court, situate in Southampton-buildings, Chancery-lane, with Power of leasing and sale thereof;" and in pursuance and execution of all other powers enabling him in that behalf, order and direct as follows:

The business to be disposed of by the Master of the Rolls and the Vice-Chancellors respectively while sitting at Chambers shall comprise the following matters, that is to say:

1. Applications for payment to any person or persons of the dividends or interest of any stocks or funds standing on the credit of any cause or matter depending in the Court of Chancery to the separate account of such person or persons.

2. Applications under the 32nd section of the act of Parliament passed in the 36th year of the reign of King George the Third, chapter 52, in all cases where the sum paid into the Bank of England, or the stock transferred into the name of the Accountant-General under such section, does not exceed three hundred pounds cash, or three hundred pounds stock, as the case may be.

3. Applications under the act passed in the session of Parliament holden in the 10th and 11th years of the reign of Her present Majesty, chapter 96, intituled "An Act for better securing Trust Funds, and for the Relief of Trustees," and the act passed in the session of Parliament holden in the 12th and 13th years of the reign of her present Majesty, intituled "An Act for the further Relief of Trustees," in all cases where the trust fund does not exceed three hundred pounds cash, or three hundred pounds stock, as the case may be.

4. Applications under "The Trustee Act, 1850," and the act of Parliament passed in the session of

Parliament holden in the 15th and 16th years of the reign of her present Majesty, intituled "An Act to extend the Provisions of 'The Trustee Act, 1850,'" in all cases where any decree or order shall have been made by the Court for the sale or conveyance of any lands.

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### NOTES ON THE COMMON LAW PROCEDURE ACT.

#### SETTING ASIDE JUDGMENT IN ACTION AGAINST BRITISH SUBJECT ABROAD—LACHES.

A WRIT of summons issued under the 15 & 16 Vic. c. 76, s. 18, bearing the indorsement for service on a British subject out of the jurisdiction of the superior courts, but not any special indorsement of the nature or particulars of the plaintiff's claim, was served in Guernsey on November 8, 1855; and the defendant not having appeared, *Martin, B.* made an order at chambers that the plaintiff should be at liberty to proceed. Judgment was signed on November 28. It appeared that the defendant had no notice of the proceedings until execution was levied on him by process out of the Guernsey Court, and on March 12, 1856, he applied by summons to set aside the proceedings on the ground that the cause of action did not arise within the jurisdiction of the court. *Crompton, J.* having refused to make any order on the ground that the defendant should have applied at an earlier period, and a motion was now made for a rule to set aside the judgment, and all subsequent proceedings.

*Martin, B.* said—"No rule will be granted. The defendant should have come within a reasonable time. By Reg. Gen. Hil. Term, 1853, 185, no application to set aside process or proceedings for

irregularity shall be allowed, unless made within a reasonable time. By the 18th section of the Common Law Procedure Act, 1852, power is given to the court or a judge, to direct that the plaintiff shall be at liberty to proceed with the action on being satisfied that the cause of action arose within the jurisdiction. If the judge is satisfied, surely there is jurisdiction. It is no new jurisdiction, merely a new process."

*Hutton v. Whitehouse*, 1 Hurlstone and N. 32.

## PROPOSED LAW UNIVERSITY.

*To the Editor of the Legal Observer.*

SIR,—The profession are greatly indebted to you for so frequently bringing this important subject to their notice; but it is perfectly hopeless to urge the right of our branch of the profession to association or membership in the proposed university until we are in a position to contribute funds to its maintenance and support. Those funds are the revenues of the Inns of Chancery.

The position of the two branches of the profession in regard to the Inns of Court and Chancery is analogous to that of separate owners of two estates after a legal partition of their common property. It would be unreasonable, and worse than unreasonable, for one such owner to insist still on his right to participate in the other's inheritance without the latter's agreement to throw the two estates again into a common ownership.

The revenues of the Inns of Chancery may be taken to be at least £5,500 per annum,\* and unfortunately these revenues are consumed by sixty or seventy members of the profession, to the prejudice of the general body.

There is no question of greater importance to our branch of the profession than the restoration of these public funds to the legitimate purpose for which such noble institutions were founded. If they were used for the advantage of the profession, as the Inns of Court and their revenues have been and are now being used by the bar, there would be some hope of keeping pace with the requirements which the advance of education in all departments of science impose on a profession desiring to preserve its prestige as a "learned" profession.

We look with much interest to the course which the Council of the Law Institution will take on this question. If they will endeavour—by persuasion or remonstrance, or, failing these, by appeal to the Legislature to obtain the restoration of these funds—they will gain the esteem and receive the support of the profession at large. Even among the recipients of these funds not a few are to be found, and those of the *élite* of them, who feel some shame in offering as their own that hospitality which is provided at the sacrifice of the best interest of their profession.

C.

## LIST OF LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

19 & 20 Vict.

(Concluded from page 454).

85. An Act for carrying into effect certain Arrangements between the Trustees of the Renfrewshire

Turnpike Roads and the Lord Provost, Magistrates, and Council, and Police and Statute Labour Committee, of Glasgow; and for continuing in other respects the Acts relating to the said Roads.

86. An Act to enable the Morayshire Railway Company to construct a Railway from Orton to Craigellachie, and for other Purposes.

87. An Act for authorising Traffic Arrangements between the West End of London and Crystal Palace and the London, Brighton, and South Coast Railway Companies, the Regulation and Increase of Capital, and for other Purposes.

88. An Act to afford facilities to the Bagenalstown and Wexford Railway Company, for raising the funds necessary to enable them to execute their Undertaking, and for other Purposes.

89. An Act for more effectually repairing several Roads leading to and from the town of Monmouth, and for making several Lines of Road to communicate therewith, in the Counties of Monmouth, Gloucester, and Hereford.

90. An Act for the Improvement of Part of the District of St. Peter Bournemouth in the Parishes of Christchurch and Holdenhurst in the County of Southampton, and for providing a Pier there.

91. An Act for better supplying with Water the City of Edinburgh and Town and Port of Leith and places adjacent.

92. An Act for making a Railway from the Epsom Branch of the London, Brighton, and South Coast Railway to Epsom to Leatherhead.

93. An Act for incorporating the Salisbury Railway and Market House Company; for authorising them to make and maintain a Railway and a Market House at Salisbury; and for other Purposes.

94. An Act for making a Railway from the Stocksfield Station of the Newcastle-upon-Tyne and Carlisle Railway to the Stockton and Darlington Railway, near Conside Ironworks, with a Branch to the Derwent Iron Company's Railway; and for other Purposes.

95. An Act to enable the Swansea Vale Railway Company to make Extension and Branch Railways, and for other Purposes.

96. An Act to repeal the Act for more effectually making, straightening, repairing, and improving the Roads from near the Town of Lewes to Polegate in the Parish of Hailsham, and from thence to Eastbourne, and to Polegate to Hailsham Common, in the County of Sussex, and to make other provisions in lieu thereof.

97. An Act for making and Maintaining a Turnpike Road from Conway to Llandudno in the County of Carnarvon, and for other Purposes.

98. An Act for making a Railway from Dunfermline to Killairne with a Branch to Kingseat in the County of Fife, to be called "The West of Fife Mineral Railway."

99. An Act for making a Railway from the Town of Maybole to the Town and Harbour of Girvan, to be called "The Maybole and Girvan Railway."

100. An Act for making a Railway from the South Wales Railway near Brinspill in the Parish of Awre to Howbeach Valley in the Forest of Dean, with Branches; and for other Purposes.

101. An Act for incorporating the Ceylon Railway

\* We believe that this sum is vastly over-estimated.—Ed.



- Company, and for other Purposes connected therewith.
102. An Act for enabling the Somerset Central Railway Company to construct a Railway from Glastonbury to near Bruton, and for other Purposes.
103. An Act for more effectually repairing the Road leading from Wem to the Lime Rocks at Bronygarth in the County of Salop, and for making several Lines of Road connected with the same in the Counties of Salop and Denbigh.
104. An Act for continuing the Term, and amending and extending the Provisions of the Act relating to the Cleobury North and Ditton Priors District and Cleobury Mortimer district of Turnpike Roads, in the Counties of Salop and Worcester.
105. An Act for authorising a Lease of the Wimbledon and Croydon Railway, and for authorising the Purchase of additional Lands and the raising of additional Capital by the Wimbledon and Croydon Railway Company; and for other purposes.
106. An Act to enable the Stirling and Dunfermline Railway Company, to create additional Shares in their Undertaking; and for other Purposes.
107. An Act to amend the Constitution of "The London Printing and Publishing Company, Limited."
108. An Act to amend certain Acts relating to the Luton District Turnpike Road, and make other Provisions in lieu thereof.
109. An Act to extend the Times limited for certain Purposes by the Acts relating to the Metropolitan Railway, and to enable the Metropolitan Railway Company to form a Junction with the Great Northern Railway, and for other Purposes.
110. An Act for making a Railway from the Town of Nairn to the Town of Keith.
111. An Act for authorising Deviations from the authorised Line of the Severn Valley Railway, and for making further Provision with respect to shares in the Capital of the Severn Valley Railway Company, and for facilitating the completion of their Undertaking; and for other Purposes.
112. An Act for establishing and maintaining a Ferry and Floating Bridge between Stokes Bay and Ryde in the County of Southampton, with Landing Places and Approaches thereto.
113. An Act for making a Railway from the Scottish Central Railway at Dunblane by Doune to Callander, to be called "The Dunblane, Doune, and Callander Railway."
114. An Act for making a Railway from Castle Douglas, by Dalbeattie, to the Glasgow and South-western Railway at Dumfries, and for other Purposes.
115. An Act for granting further Powers for lighting, cleansing, sewerage, and improving the Borough of Leeds, and for other Purposes.
116. An Act for regulating the Rates and Charges to be taken by the Grand Junction Waterworks Company for a Supply of Water to Parts of the Parish of Paddington, and for other Purposes.
117. An Act to grant further Powers to the Crystal Palace Company for the raising of Capital, for the internal Management of their Undertaking, and with respect to Dulwich Wood.
118. An Act to consolidate the Powers of the Gloucester Gaslight Company, to enable the same to raise Money, and for other Purposes.
119. An Act for the making of a Dock and Wharf at Thames Haven, and for other Purposes.
120. An Act for the making by the London and South-western Railway Company of a Railway from Yeovil to Exeter, to be called "the Exeter Extension Railway;" and for other Purposes.
121. An Act to amend the Acts relating to the East Indian Railway Company.
122. An Act for making a Railway from the Taff Vale Railway to the River Ely in the County of Glamorgan, for converting Part of the said River into a tidal Harbour and regulating the Access thereto, for authorising Arrangements with the Taff Vale Railway Company; and for other Purposes.
123. An Act for altering the Crewe and Shrewsbury Line of the London and North-western Railway, for making Provision with respect to Station Accommodation at Shrewsbury, and for other Purposes.
124. An Act to enable the Londonderry and Farnborough Railway Company to create Preference Shares with Priority of Dividend over all the existing Shares of the Company, and for other Purposes.
125. An Act for making a Railway from the authorised Line of the West End of London and Crystal Palace Railway (Extension to Bromley and Farnborough) at Shortlands in the Parish of Beckenham in the County of Kent to Saint Mary Cray in the same County.
126. An Act to enable the Oxford, Worcester, and Wolverhampton Railway Company to raise further Money for the Completion of the Broad Gauge, and for other Purposes; and to convert their Mortgage Debt into Stock.
127. An Act to repeal an Act passed in the Fourth Year of the Reign of His late Majesty King George the Fourth, intitled An Act for more effectually amending and keeping in repair the Roads from the Town of Uttoxeter to the Town of Newcastle-under-Lyme in the County of Stafford, so far as relates to the Uttoxeter District of the said Roads, and for making certain new Pieces of Road to communicate therewith, all in the said County of Stafford, and to confer larger and additional Powers and Provisions in lieu of those therein contained; and for other Purposes.
128. An Act to amend An Act for draining, embanking, and improving the Fen Lands and Low Grounds within the Parishes, Hamlets, Townships, or Places of Bardney, Southwold, otherwhise Southry, Topholme, Bucknall, Herringston, Stixwold, Edlington, and Thimbleby, in the County of Lincoln, and to confer further Powers on the Commissioners under such Act; and for other Purposes.
129. An Act to revive and extend certain of the Powers of the Waveney Valley Railway Company with relation to their Railway.
130. An Act for authorising the Abandonment of Parts of the authorised Lines of the Westminster Terminus Railway, and the making of other Lines of Railway in lieu thereof, and for reducing the Capital of the Westminster Terminus Railway Company; and for other Purposes.
131. An Act to render more effectual the Powers of

raising Money given by "The Severn Navigation Act, 1853," and for other Purposes.

2. An Act for making a Railway from the Oswestry and Newtown Railway in the Parish of Buttington in the County of Montgomery to Shrewsbury, with a Branch thereout to Minsterley in the County of Salop, and for other Purposes.
3. An Act for extending the Operations of the Society for the Discharge and Relief of Persons imprisoned for small Debts throughout England and Wales.
4. An Act to unite and amalgamate the Undertaking of the Scottish Midland Junction Railway Company with the Undertaking of the Aberdeen Railway Company, to be thenceforth called "The Scottish North-eastern Railway Company," and to regulate the Management of and confer additional Powers on the United Company, and for other Purposes.
5. An Act for making a Railway from the Southampton and Dorchester Railway to Blandford Saint Mary in the County of Dorset, and for other Purposes.
6. An Act for making a Railway from the Scottish Midland Junction Railway, near the Dunkeld Road Bridge, to Methven, in the County of Perth.
7. An Act to extend the Time limited for completing the Oxford, Worcester, and Wolverhampton Railway, and for adapting the same to the Broad Gauge, and for other Purposes.
8. An act to provide for the Arrangement of the Financial Affairs of the City of Perth, for the Maintenance of the Port and Harbour; and for other Purposes therewith connected.
9. An Act to enable the Scottish Central Railway Company to make Branch Railways to the Town of Denny in the County of Stirling.

PRIVATE ACTS, PRINTED BY THE QUEEN'S PRINTER, AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

1. An Act to amend an Act made and passed in the Tenth Year of the Reign of Her present Majesty, intituled An Act to divide the Parish and Rectory of Doddington otherwise Dornington into Three separate and distinct Parishes and Rectories, and to endow the same out of the Revenues of that Rectory, and to make Provisions for the further Division of such Rectories and Parishes, and for other Purposes connected therewith.
2. An Act for continuing in force, during the Minority of Mrs Clara Clarke Thornhill, the Wife of William Capel Clarke Thornhill, of Swakeleys in the County of Middlesex, Esquire, the Powers conferred by "Thornhill's Estate Act, 1852," and "Thornhill's Estate Act, 1854," and for other Purposes.
3. An Act for authorising the Trustees under the Will of William Wainman Esquire, deceased, to grant Leases, and to make Sales, Exchanges, and Partition of the Real Estates devised by or subject to the Trusts of the same Will; and for other Purposes.
4. An Act for giving effect to a Compromise relating to the Estate of the Most Noble George Fourth Duke of Marlborough, deceased, and, with a view thereto, for extinguishing the demisable Quality of certain Copyhold Here-

ditaments, Parcels of the Manors comprised in the estates and hereditaments settled on the Dukedom, and for creating a Term of Years in a Portion of the said Copyhold Hereditaments.

5. An Act to authorise Sir Lionel Milborne Swinnerton Baronet and his Issue to assume and bear the Surname of Pilkington jointly with the Surnames of Milborne and Swinnerton, and to be called by the Surnames of Milborne Swinnerton Pilkington.
6. An Act for vesting in Trustees the undivided Parts, subject to the Limitations of the Wills of Benjamin Ingham, deceased, and Joshua Ingham, deceased, respectively, of Estates in the West Riding of the County of York, and for authorising Partitions of Parts of those Estates, and for authorising Leases and Sales of Parts of those Estates, and for other Purposes.
7. An Act to authorise the granting of Leases of Parts of the Freehold, Copyhold and Leasehold Estates of the late Leonard Lewen Wheatley Esquire, situate in the several Parishes of Saint Lawrence and Saint Peter the Apostle in the Isle of Thanet, of Meopham near Gravesend, and Ash next Sandwich, and elsewhere in the County of Kent, and within the Manor of Stepney otherwise Stebunheath Ratcliffe in the Parish of Saint Dunstan Stepney, and elsewhere in the County of Middlesex.
8. An Act to enable the Trustees of the Will of Matthew Butterwick Esquire to sell the Rectory and Tithes of Thirsk, held by Lease for Lives under the Archbishop of York, and certain Policies of Assurance, and for the Investment of the Proceeds, and for other Purposes; of which the Short Title is "Butterwick's Estate Act, 1856."
9. An Act for enabling Leases for Mining, Agricultural, and Building Purposes to be made of the Estates of John Walmesley Esquire, deceased, and Sales of Portions thereof, and for other Purposes; the Short Title of which is "Walmesley's Estate Act, 1856."
10. An Act for enabling Leases and Sales to be made of Lands and Hereditaments in the Counties of Northumberland and Durham belonging to the Families of Thoroton and Croft, and for other Purposes; called "The Thoroton and Croft Estate Act, 1856."
11. An Act for vesting in Trustees the Estates of the late Sarah Reddall, deceased, situate in the County of Northampton, known as the Dallington Estate, for the Purpose of enabling Leases, Sales, Exchanges, and Partitions to be made of the same; and for other Purposes.
12. An Act to enable the Trustees of the Will of John Bell Esquire to sell a Leasehold Estate for Lives in the County of York, known as "Wildon Grange," held of the Archbishop of York, and for the Re-investment of the Proceeds in the Purchase of Real Estates of Inheritance; of which the Short Title is "Bell's Estate Act, 1856."
13. An Act to amend and enlarge the Powers of an Act passed in the Twelfth and Thirteenth Years of the Reign of Her present Majesty Queen Victoria, intituled An Act for authorising the Trustees of the late Thomas Gordon to sell his Estates of Cairness and others in the County of Aberdeen, and to apply the Price thereof in

Payment of the Debts and Burdens affecting the same, and for laying out the Residue of the Price in the Purchase of other Lands to be entailed, in Terms of the Trust Deed of Settlement by the said Thomas Gordon; and for other Purposes.

14. An Act for enabling Partitions, Sales, Exchanges, and Leases to be made of certain Parts of the Estates devised by the Will of Sir John William Head Brydges, deceased, and for other Purposes.

#### PRIVATE ACTS, NOT PRINTED.

15. An Act to enable George Shipton Clerk to exercise his Office of Priest, and to hold any Benefice or Preferment in the United Church of England and Ireland.
16. An Act to dissolve the Marriage of John Talbot Esquire with Marianne his now Wife, and to enable him to marry again; and for other Purposes.
17. An Act to dissolve the Marriage of Madgwick Spicer Davidson Gentleman with Katharine Anne his now Wife, and to enable the said Madgwick Spicer Davidson to marry again; and for other Purposes therein mentioned.

### INCONVENIENCE OF THE COURTS AT WESTMINSTER.

THE small and inconvenient Exchequer Chamber, where the Court of Common Law Appeal sits, has often been observed upon. In the present term, when Mr. Baron Martin had taken his seat, and was trying cases at *nisi prius*, it was expected that the judges would sit in error in the full Court of Exchequer, where no judges were at the time sitting, and the officers and practitioners were, therefore, in attendance at that court; but it was at last intimated that the judges had gone into the Exchequer Chamber, and they were found standing on the steps leading to the bench, or huddled together on the bench in the most undignified manner possible.

The Masters of the different courts stood in the midst of a crowd of persons taking down the day's sitting as best they could.

On another occasion during the sittings at *nisi prius*, some of the jurors applied to the judge, stating that they had come some miles, and when they came to the court they found there were no seats or accommodation provided for them; there was not even standing room in the court, and if they sat and walked about the hall they caught cold, and if they went to any place in the neighbourhood their names were called in their absence, and they were fined. It really became cruel treatment to them to say nothing of the great loss and inconvenience to tradesmen having to attend for so many days.

Mr. Justice Crompton looked about for some time, and then said he did not know how he could help the jurors; he wished he could; but no doubt it was very inconvenient.

A Juror said there were two seats occupied by gentlemen now. If they were not jurymen, they ought to give up their seats. The Judge said no doubt they ought. No one having moved,

A Juror said, as those gentlemen did not leave their seats, most likely they were jurymen, and then there would be a sufficient number for the day, and perhaps his lordship would discharge the applicants.

The Judge said he would finish trying the case then going on, and then he would see what he could do.

Upon some occasions the Lord Chancellor's Court has been used for the *nisi prius* sittings in term. No doubt it is larger than the Bail Court, but still there are inconveniences attendant upon that. The mere fact of there being some remote intention of removing the courts to some other part of the town will be a sufficient reason for continuing the present inconvenience. As the courts, by a happy fiction, are supposed to sit in Westminster Hall, why not place a number of seats in the large building upon which the weary might take their rest.—From the *Times*.

### ADMISSION OF ATTORNEYS.

*Michaelmas Term, 1856, pursuant to Judges' Orders.*

#### Queen's Bench.

##### *Clerk's Name and Residence.*

Dixon, Robert, 18, Sutherland-place, Bayswater ...  
 Elliott, Thomas Titchmarsh, March... ..  
 Green, John Matthias, 8, Summer Hill-terrace, Birmingham ... ..  
 Hill, Alfred Brodhurst, Bach Hall, in county of Chester ... ..  
 Pridham, Henry, 30, Montagu-place, Russell-square; and Plymouth ... ..  
 Royle, William, 32, Torrington-square; and Southampton ... ..  
 Smith, George Alderson, 26, Essex-street, Strand; and Leeds ... ..  
 Waldy, Henry Temple, 52, Albemarle-street, Piccadilly ... ..  
 Whitaker, Francis, 12, Lincoln's-inn-fields ... ..  
 Woodhouse, Edward Gardine, 4, Lansdowne-terrace, Kensington-park ... ..

##### *To whom Articled, Assigned, &c.*

J. Thrupp, Winchester buildings.  
 R. Orton, March.  
 T. Martineau, Birmingham.  
 W. Wagstaff, Liverpool.  
 G. Pridham, Plymouth.  
 W. Royle, the Elder, deceased, Lymington; H. Page, Southampton.  
 W. Ward, deceased, Leeds; W. S. Ward, Leeds.  
 K. Barnes, Spring-gardens.  
 E. T. Whitaker, Lincoln's-inn-fields; E. E. Whitaker, Lincoln's-inn-fields.  
 H. W. Woodhouse, New-square.

RENEWED NOTICES OF ADMISSION.

*Last Day of Michaelmas Term, pursuant to the Rule of Court of Hilary Term, 1858.*

artlett, Charles, 24, Clarence-street, Islington;  
Vincent-terrace; New-inn; Handsworth; and  
Croydon... ..  
owers, Barclay George 35, North-street, New-road,  
Pentonville; Brunswick-parade ... ..  
rooke, Charles Stuart, Winstaston, near Nantwich...  
otton, Jesse Charles, 31, Highbury-place, Islington.

raven, Abraham, 91, Newman-street, Oxford-street  
astwood, William Manley, 56, Stanhope-street,  
Hampstead-road; and Stoney Royd, Todmorden...  
riffith, William, Much Wenlock ... ..  
ordern, Alexander Radcliffe, 3, South Molton-street,  
Bond-street ... ..  
ustler, William Octavius, Halsted... ..  
eggett, Francis Charles, 2, Charlwood-place, War-  
wick-place, Pimlico; and Upper Bedford-place ...  
Miller, James Russell, 24, Eastcheap; Leytonstone;  
and Wanstead ... ..  
Nash, Alfred Dormor, 14, Great Coram-street, Rus-  
sell-square ... ..  
Simpson, Henry Blythe, 46, Great Ormond-street;  
and Derby ... ..  
Sugden, John, the Younger, 86, College-place, Cam-  
den Town; Arlington-street; and Knedlington,  
near Howden ... ..  
Thompson, George, 30, Clarence-street, Islington;  
and York ... ..  
Thorpe, Roby Liddington, Oakley Cottage, Werring-  
ton-street, Oakley-square; and Great College-  
street and Pratt-street, Camden Town. ... ..  
Tosswill, Charles Speare, 8, Carlton Hill East, St.  
John's Wood ... ..  
Waring, John Hugh, 3, Saint Anne's-terrace, Brix-  
ton-road; and Berkeley Villas ... ..

A. Ryland, Birmingham.  
B. W. Rawlings, deceased, John Street; B. F. Wat-  
son, Lincoln's-inn-fields.  
T. P. Lowe, Nantwich.  
W. Taylor, deceased, Featherstone-buildings; D  
Gray, Lincoln's-inn-fields.  
E. Peters, York.

A. G. Eastwood, Stoney Royd.  
A. Phillips, Shiffnal.

H. C. Kingsford, Canterbury.  
O. Hustler, deceased, Halsted; W. H. Sams, Clare.

J. E. Buller, Lincoln's-inn-fields.

J. Miller, Eastcheap.  
J. I. Wathen, Bedford-square; H. Crooker, Chan-  
cery-lane; A. Mayhew, Carey-street.

J. J. Simpson, Derby.

G. England, Howden.

L. Thompson, York.

M. Browne, Nottingham.

J. T. Church, Bedford-row.  
J. F. B. Fay, Ruthin; J. P. Jones, Ruthin; T. C.  
Campbell, Essex-street.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

MICHAELMAS TERM, 1856.

At the examination of candidates for admission on  
the roll of attorneys and solicitors of the superior  
courts, the Examiners recommended as deserving of  
honorary distinction—

ALBERT GORDON LANGLEY, of Chudleigh,  
Devonshire,

Who served his clerkship to Charles Langley, of  
Chudleigh, and William Henry Langley, of Great  
James-street, Bedford-row; and the Council of the  
Incorporated Law Society have accordingly awarded  
a prize of books to be presented to him.

By order of the Council,  
R. MAUGHAM, *Secretary*.  
*Law Society's Hall, 15th Nov. 1856.*

NOTES OF THE WEEK:

LAW APPOINTMENTS.

Mr. Charles Spilman Todd, solicitor, has been  
appointed Sheriff of Hull.

Mr. George White, solicitor, has been appointed  
Registrar of the Epsom County Court.

Edward P. Alderson, Esq., Barrister-at-Law, has

been appointed Recorder of Faversham, in the room  
of William Clarkson, Esq., deceased. Mr. Alderson  
was called to the bar by the Honourable Society of  
the Inner Temple on the 17th of June, 1851, and  
went the Home Circuit.

T. D. Moleyns, Esq., Q.C. of the Munster Circuit,  
has been appointed Crown Prosecutor at Limerick,  
in the room of Michael Barry, Esq., promoted to a  
judgeship at Perth, Western Australia. Mr. De  
Moleyns was called to the Bar in Hilary Term, 1831.

Denis Caulfield Heron, Esq., has been appointed a  
Crown Prosecutor for the county of Clare, in the  
room of Thomas Fitzgerald, Esq., Q.C. Mr. Heron  
was called to the Bar in Hilary Term, 1848.

The Lord Bishop of Lincoln has appointed Dr.  
Travers Twiss to the office of Chancellor of the  
Diocese of Lincoln, vacant by the decease of Dr.  
Haggard.

We have reason to believe (says the *Globe*) that  
Mr. Pressly, deputy chairman of the Board of Inland  
Revenue, will succeed to the chairmanship of that  
board, vacant by the death of Mr. John Wood.

RESULT OF THE MICHAELMAS TERM EXAMINATION.

At the examination of candidates, which took  
place on the 12th instant, at the Hall of the Incor-  
porated Law Society, 165 notices had been received,  
including a considerable number whose names did

not appear in the printed list of admissions. Of these only 120 perfected their testimonials of service, and were entitled to be examined. On the day of examination three more failed to attend; and, after full consideration of all the papers, which occupied nearly the whole of the next day, the examiners passed 100, and postponed 17. The examiners of the Term were Sir Archer Denman Croft Bart., Mr. Bolton, Mr. Coverdale, Mr. Sharpe, and Mr. Sudlow.

#### ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed Tuesday the 25th of November, 1856, at the Rolls Court, Chancery-lane, at four in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his common law admission or his certificate of practice for the current year at the Secretary's Office, Rolls Yard, Chancery-lane, on or before Monday, the 24th of November instant.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Wearing v. Ellis.* November 19, 1856.

#### INSOLVENT — RECOVERY OF PROPERTY FROM ASSIGNEES AFTER DEBTS SATISFIED.

*Held, dismissing with costs an appeal from the Vice-Chancellor Stuart, that an insolvent who had taken the benefit of the Insolvent Act, 5 & 6 Vict. c. 116, whereby his property became vested in his official assignee, was entitled after his creditors had been satisfied to maintain a suit to recover back property which had been improperly conveyed away by his official assignee, without first obtaining a revesting order from the Insolvent Court.*

It appeared that in 1848 a Mr. Harrison took the benefit of the Insolvent Act, 5 & 6 Vic. c. 116, and that he was entitled to certain property for an estate in fee-simple in reversion. The creditors in 1844 accepted a composition of 3s. 6d. in the pound, and executed a release in full. In 1846 the official assignee conveyed the property, which had not then fallen into possession, to a Mr. Cowburn, as was admitted, without consideration. Mr. Harrison entered into possession on the death of the tenant for life, and continued in possession until his death, when he devised by his will all his property to the plaintiff, who filed this bill against Mr. Cowburn's assignee for a reconveyance. There was no revesting order obtained from the Insolvent Court. The Vice-Chancellor Stuart had decreed as prayed by the will, whereupon this appeal was presented.

*Malins and Prendergast in support; Wigram and Toller contra.* [*Cur. ad. vult.*]

The Lord Chancellor said that the right of a bankrupt depended upon the 6 Geo. 4, c. 16, s. 132, which directed that the assignees should account to him for any surplus of his real and personal estate remaining after payment of his creditors, and should pay the same to him. This clause gave the bankrupt a right of action against the assignees, although it did not appear the point had been decided, and with regard to property not capable of being handed over such as real estate, the assignees became trustees for the bankrupt (*Charman v. Charman*, 14 Ves. 580). The question then was whether the same rule held good in insolvency? By the 1 & 2 Vic. c. 110, s. 92, it was provided that the commissioner after the insolvent's debts had been paid, might order the warrant of attorney given by the insolvent to be cancelled, and all his property to be re-vested in him. Now all proceedings under the 5 & 6 Vic. c. 116, prior to the 10 & 11 Vic. c. 102, were to be

taken in the Court of Bankruptcy, and the general effect of the act was to assimilate such proceedings to bankruptcy. Such being so, the decision of Sir William Grant in *Charman v. Charman* was exactly in point. Nor did it make any difference because the creditors had not been paid 20s. in the pound, as they had been paid what satisfied them, and they had no further claim upon the insolvent. The doctrine to be gleaned from the cases cited of *Heath v. Chadwick*, 2 Phill. 649; *Rockford v. Battersby*, 2 H. of L. Cas. 388; and *Freston v. Wilson*, 5 Hare 185, was that no other Court than that of Bankruptcy or Insolvency had any right to interfere where the legislature had vested in them the supreme power. But here all the debts of the insolvent had been satisfied, and the assignee had executed an assignment of the property, and the doctrine of non-intervention could not be upheld. The creditors could not be heard to contest the question, nor the assignee. The appeal would therefore be dismissed with costs.

### Vice-Chancellor Kindersley.

*Bannerman v. Clark.* Nov. 19, 1856.

#### SPECIFIC PERFORMANCE—INTEREST ON PURCHASE MONEY—PAYMENT INTO COURT.

*By conditions on a contract for the purchase of certain property, it was provided that a deposit of £10 per cent. should be paid immediately, and the remainder of the purchase money on October 11, 1855, when the purchase was to be completed, and that if from any cause whatsoever the purchase should not then be completed, the purchaser should pay interest at £5 per cent., without prejudice to the vendor's right to re-sell. The vendor died two days before October 11, and this bill for a specific performance had been filed, and the purchase money paid into court: Held, that the purchaser was liable to pay interest on the purchase money.*

THIS was a bill for the specific performance of a contract for the purchase of certain property in Kent, subject to certain conditions, which *inter alia* provided that a deposit of £10 per cent. should be immediately paid, and the remainder of the purchase-money on October 11, 1855, when the purchase was to be completed, and that if from any cause whatsoever the purchase should not then be completed, the purchaser should pay interest at £5 per cent., without prejudice to the vendor's right to re-sell. The vendor died two days before October 11, and

is bill had been filed, and the purchase money paid to court.

Anderson and G. W. Collins for the plaintiff, the purchaser; Bevir for the defendant.

The Vice-Chancellor said that the event of the endor's death, which had prevented the completion of the purchase, was within the terms from any cause whatsoever, and that the purchaser was liable to pay interest, notwithstanding the payment into court, each party to bear their own costs of this suit.

### Vice-Chancellor Stuart.

Daniell v. Daniell. Nov. 14, 1856.

PAYMENT OF MONEY OUT OF COURT—ORDER AT CHAMBERS—PETITION.

*An order will not be made at chambers for the payment out of court of a sum exceeding £300, although such sum is standing to a separate account, and by the decree on further directions the petitioner was declared entitled thereto.*

By the decree on further directions in the suit the petitioner was declared entitled to a sum of £646 odd, which was standing to his separate account, and this petition was presented for its payment out of court.

Charles Webster in support.

The Vice-Chancellor said that but for the direction recently given by the equity judges to their chief clerks not to make orders at chambers for the payment out of court of any sum above £300, a petition would not have been required, and the order was accordingly made.

### Vice-Chancellor Wood.

McCulloch v. Gregory. November 13, 1856.

WILL—ESTABLISHING AS AGAINST HEIR—PURCHASER—TITLE.

*A will was disputed by the sole executor under a previous will, but proof was granted to the later will. A compromise was afterwards entered into pending an appeal from this decision: Held, that a purchaser, under the decree in a suit to protect the personal estate pending litigation and to carry the trusts of the will into execution, was not entitled to claim the will to be established against the heir and next-of-kin.*

*Such proof is only required where there is an intestacy, or litigation by the heir.*

It appeared that upon the death of Mr. John Thompson in 1843 a will dated in March, 1843, was offered for probate by Mrs. Le Bas, the sole next-of-kin and heiress-at-law, and opposed by Mr. Barnard Gregory, who claimed as sole executor under a former will dated in February, 1843. In June, 1846, the Judge of the Prerogative Court decided in favour of the will of March, 1843, and against his decision Mr. Gregory appealed. Pending the appeal, however, Mrs. Le Bas and Mr. Gregory intermarried, and the plaintiffs, who were the parties beneficially interested under the will, were called upon to intervene. They also filed a bill in this Court to protect the personal

estate and to establish the will as against Mrs. Gregory, and to carry its trusts into execution. A compromise was, however, entered into, whereby the defendants agreed to pay to the plaintiffs £15,000 in consideration of the conveyance of all their estate and interest under the will, such sum until payment to remain a charge on the real and personal estate. The money was not paid, and in 1852 a sale was ordered by the decree. The purchaser claimed to have proved the heirship of Mrs. Gregory, and objected to the evidence furnished as insufficient, and on the chief clerk finding such proof was sufficient, this appeal was presented.

Willcock and Batten in support; Rolt and W. P. Murray contra.

The Vice-Chancellor said that although the case of *Grove v. Bastard*, 2 Phill. 619, was an authority to shew that, where there were grave circumstances of suspicion on a will and there had been litigation or threatened litigation by the heir, a purchaser would not be compelled to accept the title until the will had been established, yet in the present case the litigation had not been on the ground of intestacy, but between two parties under two wills. It would be a most mischievous doctrine to allow a purchaser in every case to take the objection now set up. In this case the purchaser was not entitled to ask the will to be established nor to require the proof of heirship. The motion would therefore be refused with costs.

### Court of Queen's Bench

Esparle Cooper. November 12, 1856.

BURGESS LIST—NON-PAYMENT OF POOR-RATE.

*Held, that a poor-rate is payable as soon as it is made and published, and no personal notice or demand is required for the purpose of disentitling a person not paying the same to be on the Burgess List under the 5 & 6 Wm. 4, c. 76, s. 9.*

This was a motion for a rule nisi upon the Mayor of Sunderland to amend the Burgess List by inserting the applicant's name. It appeared that his name had been struck out for non-payment of a poor-rate which had been made in February, 1856, although no demand was made for payment nor notice given of the rate having been made.

J. A. Russell in support.

The Court said that the rate was payable under the 5 & 6 Wm. 4, c. 76, s. 9, so soon as it was made and published, and that no personal notice or demand was required. The rule was accordingly refused.

Regina v. Mayor, &c., of Sunderland. November 13, 1856.

CLERK TO PAVING, &c., COMMISSIONERS—REMOVAL—OFFICE OF EQUAL PERMANENCE AND VALUE.

*The clerk to paving, &c., commissioners under the 50 Geo. 3, c. 25, was removable upon twenty days' notice. By the 14 & 15 Vict. c. 67, the duties of the commissioners were transferred to the corporation, and the clerk was to receive a*

WHEREAS the levying of charges upon real estate through the medium of receivers appointed by the Court of Chancery in Ireland is productive of injury and inconvenience, and is often attended with expense wholly disproportionate to any benefits derived therefrom; and it is expedient to diminish the necessity for appointing receivers by giving to the court increased facilities for the sale of real estate, and that the court should in all cases of applications to appoint receivers have a discretion to refuse or postpone the appointment as hereinafter is provided: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The expression "the court," when used in this act, shall mean "the Court of Chancery in Ireland," and shall include the Chancellor, Master of the Rolls, and each of the Masters in Ordinary acting within their respective jurisdictions; "suit" shall include "cause," "petition," and "matter."

2. When by the law or practice of the court, or by any act of Parliament, the court is or shall be empowered to appoint a receiver over real estate for payment of any charge thereon, the court in exercising such jurisdiction may have regard to the amount of the charge and of the rental of the estate, and also to the other remedies and securities (if any) possessed by the person entitled to the charge, and to the other circumstances of the case; and if the court shall be of opinion that the appointment of a receiver is unnecessary or inexpedient, or would not be productive of substantial benefit to the person entitled to the charge, it shall be lawful for the court to decline or postpone appointing a receiver, and the costs of any application for the appointment of a receiver shall be in the discretion of the court.

3. No receiver shall be appointed in respect of any judgment or judgment mortgage where the sum due on foot of such judgment shall not exceed one hundred and fifty pounds, nor where the rental of the estate over which the receiver is sought to be appointed shall not exceed one hundred pounds per annum; provided, that nothing in this section contained shall prevent the making of any order to extend to a receiver already appointed.

4. Nothing in this act contained shall extend to affect the jurisdiction of the court to appoint receivers for the payment of tithes or tithes rentcharge, but such receivers shall be appointed by the court as if this act had not passed.

5. The Act of the Parliament of Ireland passed in the eleventh and twelfth years of the reign of his Majesty King George the Third, intituled "An Act for rendering Securities by Mortgage more effectual," is hereby repealed, save as to any proceeding in any court of justice instituted prior to the passing of this act, and any such proceeding may be continued and prosecuted as if this act had not passed.

6. It shall be lawful for the court in any suit pending or to be instituted therein in relation to any real estate, if it shall appear to the court that it will be necessary or expedient that the said real estate, or any part thereof, should be sold for the purposes of such suit, to direct the same to be sold at any time after the institution of such suit, and such sale shall be as valid to all intents and purposes as if directed to be made by a decree or decretal order on the hearing of such suit, or at any other stage of the proceedings therein, and shall be carried out according to the course and practice of the court, and ac-

cording to such general orders as may from time to time be made by the court for regulating such sales and securing the title of the purchasers thereunder; and any party to the suit in possession of such estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser or such other person as the court shall direct.

#### JOINT STOCK BANKS.

19 & 20 Vict. c. 100.

1. Retiring directors in banking companies eligible for re-election.
2. Provision for existing banking companies established under recited act.

The following are the title, preamble, and sections of the act:—

An Act to amend the Law with respect to the Election of Directors of Joint Stock Banks in England. [29th July, 1866.]

WHEREAS by the act of the seventh and eighth years of the Queen, chapter one hundred and thirteen, it is enacted, that the deed of partnership of every banking company to be established under that act shall contain a specific provision for the retirement of at least one-fourth of the directors yearly, and for preventing the re-election of the retiring directors for at least twelve calendar months: and whereas it is expedient that so much of the said enactment as relates to the re-election of such retiring directors should be repealed: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; that is to say—

1. It shall not be necessary in the deed of partnership of any banking company established after the passing of this act to insert any provision for preventing the re-election of retiring directors, either absolutely or for any limited period.

2. In every banking company already established under the provisions of the said recited act, and whose deed of partnership or settlement contains a provision in accordance with the enactment hereinbefore repealed, the directors retiring at any general meeting after the passing of this act shall and may, if duly qualified in other respects, be immediately eligible for re-election, anything in the deed of partnership of such company contained to the contrary notwithstanding.

#### LEASES AND SALES OF SETTLED ESTATES ACT.

NEW ORDERS IN CHANCERY.

15th November, 1866.

THE Right Honourable Robert Monsey Baron Cranworth, Lord High Chancellor of Great Britain, with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable Sir James Lewis Knight Bruce, and the Right Honourable Sir George James Turner, the Lords Justices of the Court of Appeal in Chancery, the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir William Page Wood: Doth hereby, in pursuance of the Act of Parliament of the

19th and 20th years of her present Majesty, chapter 120, intituled "An Act to facilitate *Leases and Sales of Settled Estates*," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say:

1. Every petition under the act, and every public and private notice required by the act must set forth the name, address, and description of the petitioner, and also a place in London, Westminster, or the borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with any order of the court or notice relating to the subject of the petition.

2. All petitions and notices, and also all affidavits and other proceedings under the act are to be entitled, In the matter of the act, and In the matter of the property in question, mentioning the county and parish or place in which it is situate, and describing it by general terms, and every such petition shall be marked with the words Master of the Rolls, or with the title of the Vice-Chancellor before whom it is intended to be heard.

3. After any such petition has been presented, application may be made *ex parte* and in chambers to the judge before whom it is intended to be heard for directions in what newspapers the notices required by the act are to be inserted.

4. Motions under the twentieth section of the act may be made *ex parte* within seven clear days after the publication of the advertisement which may be last inserted in the newspaper, but not later (except by special leave of the court), and every order made on any such motion must be served on the petitioner within four days after the making thereof.

5. If the person or body corporate obtaining such order shall require a copy of the petition, such person or corporation shall at the time of serving such order make a written application to the petitioner for such copy, with an undertaking to pay all proper charges for the same.

6. Within two clear days after such application a copy of the petition shall be ready to be delivered, and shall be delivered on demand, and on payment for the same after the rate of fourpence per folio.

7. No petition under the act shall be set down for hearing until after the expiration of twenty-one days from the publication of the last of the advertisements.

8. Upon every application under the act the court must be satisfied by sufficient evidence that no such previous application to Parliament as is mentioned in the twenty-first section of the act has been made and rejected or reported against.

9. On every application under the act for authority to sell, the court must be satisfied by sufficient evidence who are the parties interested in the estate, whose consent is required by the act, and what are the circumstances which render the proposed sale proper and expedient.

10. In all cases in which under the provisions of the thirty-sixth section of the act it shall be necessary to obtain the several directions of the court for any application to the court or any consent to such application, such special directions may be obtained *ex parte* by summons at the chambers of the judge to whose court the application may be intended to be made or may have been made.

11. Every order of the court made in pursuance of the powers conferred on it by the act shall specify in what document or documents (if any), the notice referred to by the twenty-second section of the act shall be placed or endorsed, and the judge may, if he

thinks fit, require that such document or documents so endorsed shall be produced in court for his inspection, and in case of any such order relating to lands in a register county or district, the court may order a duplicate or a memorial of the same to be registered.

12. The fees and allowances to all officers and solicitors of the court in respect of the matters under the act shall be such fees and allowances as by the present practice of the court they are entitled to take and charge for business of a similar nature.

## NEW ORDERS IN CHANCERY.

### BUSINESS AT THE JUDGES' CHAMBERS.

Wednesday, 12th November, 1856.

THE Right Honourable Robert Monsey, Lord Cranworth, Lord High Chancellor of Great Britain, with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, and the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir William Page Wood, doth hereby, in pursuance of the act passed in the session of Parliament, holden in the 15th and 16th years of the reign of her present majesty, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Dispatch of Business in the said Court," and of the act passed in the session of Parliament holden in the 18th and 19th years of the reign of her present Majesty, intituled "An Act to make further Provision for the more speedy and efficient Dispatch of Business in the High Court of Chancery, and to vest in the Lord Chancellor the Ground and Buildings of the said Court, situate in Southampton-buildings, Chancery-lane, with Power of leasing and sale thereof;" and in pursuance and execution of all other powers enabling him in that behalf, order and direct as follows:

The business to be disposed of by the Master of the Rolls and the Vice-Chancellors respectively while sitting at Chambers shall comprise the following matters, that is to say:

1. Applications for payment to any person or persons of the dividends or interest of any stocks or funds standing on the credit of any cause or matter depending in the Court of Chancery to the separate account of such person or persons.

2. Applications under the 32nd section of the act of Parliament passed in the 36th year of the reign of King George the Third, chapter 62, in all cases where the sum paid into the Bank of England, or the stock transferred into the name of the Accountant-General under such section, does not exceed three hundred pounds cash, or three hundred pounds stock, as the case may be.

3. Applications under the act passed in the session of Parliament holden in the 10th and 11th years of the reign of Her present Majesty, chapter 96, intituled "An Act for better securing Trust Funds, and for the Relief of Trustees," and the act passed in the session of Parliament holden in the 12th and 13th years of the reign of her present Majesty, intituled "An Act for the further Relief of Trustees," in all cases where the trust fund does not exceed three hundred pounds cash, or three hundred pounds stock, as the case may be.

4. Applications under "The Trustee Act, 1850," and the act of Parliament passed in the session of



Parliament holden in the 15th and 16th years of the reign of her present Majesty, intituled "An Act to extend the Provisions of 'The Trustee Act, 1850,'" in all cases where any decree or order shall have been made by the Court for the sale or conveyance of any lands.

5. Applications on behalf of infants under the 12th, 16th, and 17th sections of the act of Parliament passed in the 1st year of the reign of King William the Fourth, chapter 65, in all cases where the infant is a ward of the Court of Chancery, or the administration of the estate of the infant, or the maintenance of the infant is under the direction of the Court.

In the 4th of these orders, the word "lands" is to be construed according to the definition and interpretation thereof contained in the 2nd section of "The Trustee Act, 1850."

CRAWFORTH, C.  
JOHN ROMILLY, M. R.  
RICHARD T. KIDDERLEY, V. C.  
JOHN STUART, V. C.  
WILLIAM PAGE WOOD, V. C.

### NOTICES OF NEW BOOKS.

*The Common Law Procedure Acts of 1852 and 1854; containing an Abstract of Every Case decided upon their Construction to the Present Time, Copious Information on the New Practice of the Courts of Common Law at Westminster, and New Precedents and Forms adapted to the Various Enactments of the Acts; together with the Regule Generales of 1853 and 1854, the New Pleading Rules, the Directions to the Masters of the Courts, the Scales of Costs on Taxation, the List of Fees under the Statute of the 15 & 16 Vic. cap. 78, Table of Cases, and Full Index; forming a Complete and Concise Book of Practice.* By THOMAS HUGH MARKHAM, M.A., Barrister-at-Law, of the Inner Temple. Wildy and Sons, Lincoln's Inn-archway, London.

SINCE the Common Law Procedure Acts of 1852 and 1854 were passed, it appears that more than two hundred decisions have taken place upon the construction of their various enactments, and Mr. Markham has collected these cases from the several Law Reports, and given an abstract of them under the several sections to which they respectively relate. In the Preface Mr. Markham says—

"This I have done; giving in most instances the names and the *ipsissima verba* of the learned judges.

"There are some few cases having reference to the acts which were decided during last term; these of course are not yet published in the old established reports, but I have been able to give them notwithstanding, and for them I am indebted to that energetic periodical, the *Weekly Reporter*.

"Besides these cases, the work is interspersed with a variety of what I hope may be deemed practical information, together with new Forms and Precedents, &c., &c.

"The *Regule Generales* of 1853 and 1854, the Pleading Rules of 1853, the Directions to the Masters of the Courts, the Scales of Costs on Taxation, and the List of Fees under the statute 15 & 16 Vic. c. 78, also form part of the book."

And he adds—

"I have endeavoured to make it a handy, practical, and serviceable work, moderate in price, alike

useful to counsel, attorneys, and indeed to all who are in any way connected with the law; and I am vain enough to believe that if my professional brethren use it, it will be the means of saving them some trouble; and I now commend it to their favourable consideration.

### LAW OF COSTS.

#### OF HABEAS CORPUS AD TESTIFICANDUM—OF WITNESS IN TWO ACTIONS.

In an action brought by the plaintiff, who was then confined in Warwick gaol a prisoner for debt, against the sheriff of Warwickshire, for trespasses committed by him and his officers in arresting the plaintiff under a writ of *ca. sa.*, the plaintiff was a material witness on his own behalf. A writ of *habeas corpus ad testificandum* was sued out, under which the plaintiff was brought up to attend the trial, and he was present at the same, although not called upon to give evidence. He obtained a verdict, with £25 damages.

There was another action tried on the same day, brought by him against the same defendant for trespasses in the execution of a *f. fa.*, in which action the plaintiff was called and gave evidence. The defendants obtained a verdict. The Master, in taxing the costs of the first action, allowed to the plaintiff all the costs of the writ of *habeas corpus*, whereby he was enabled to attend both trials.

On a rule *sibi* to review the taxation, *Pellock*, Lord Chief Baron, said:—"A party who fails in a cause must bear the expense of his failure. The rule is, if a witness attends in one cause only, he will be entitled to the full allowance. If he attend in more than one cause he will be entitled to a proportionate part in each cause only. If the expense of bringing up this party as a witness was £10, a proportion—one-half—must be allowed."

*Griffin v. Hoskyns*, 1 Hurlstone and N. 95.

### NOTES ON THE COMMON LAW PROCEDURE ACT.

#### SETTING ASIDE JUDGMENT IN ACTION AGAINST BRITISH SUBJECT ABROAD—LACHES.

A WRIT of summons issued under the 15 & 16 Vic. c. 76, s. 18, bearing the indorsement for service on a British subject out of the jurisdiction of the superior courts, but not any special indorsement of the nature or particulars of the plaintiff's claim, was served in Guernsey on November 8, 1856; and the defendant not having appeared, *Martin*, B. made an order at chambers that the plaintiff should be at liberty to proceed. Judgment was signed on November 28. It appeared that the defendant had no notice of the proceedings until execution was levied on him by process out of the Guernsey Court, and on March 12, 1856, he applied by summons to set aside the proceedings on the ground that the cause of action did not arise within the jurisdiction of the court. *Crompton*, J. having refused to make any order on the ground that the defendant should have applied at an earlier period, and a motion was now made for a rule to set aside the judgment, and all subsequent proceedings.

*Martin*, B. said—"No rule will be granted. The defendant should have come within a reasonable time. By Reg. Gen. Hil Term, 1853, 185, no application to set aside process or proceedings for

regularity shall be allowed, unless made within a reasonable time. By the 18th section of the Common Law Procedure Act, 1852, power is given to the court or a judge, to direct that the plaintiff shall be at liberty to proceed with the action on being satisfied that the cause of action arose within the jurisdiction. If the judge is satisfied, surely there is no jurisdiction. It is no new jurisdiction, merely a new process."

*Hutton v. Whitehouse*, 1 Hurlstone and N. 82.

## PROPOSED LAW UNIVERSITY.

*To the Editor of the Legal Observer.*

SIR,—The profession are greatly indebted to you for so frequently bringing this important subject to their notice; but it is perfectly hopeless to urge the right of our branch of the profession to association or membership in the proposed university until we are in a position to contribute funds to its maintenance and support. Those funds are the revenues of the Inns of Chancery.

The position of the two branches of the profession in regard to the Inns of Court and Chancery is analogous to that of separate owners of two estates after a legal partition of their common property. It would be unreasonable, and worse than unreasonable, for one such owner to insist still on his right to participate in the other's inheritance without the latter's agreement to throw the two estates again into a common ownership.

The revenues of the Inns of Chancery may be taken to be at least £5,500 per annum,\* and unfortunately these revenues are consumed by sixty or seventy members of the profession, to the prejudice of the general body.

There is no question of greater importance to our branch of the profession than the restoration of these public funds to the legitimate purpose for which such noble institutions were founded. If they were used for the advantage of the profession, as the Inns of Court and their revenues have been and are now being used by the bar, there would be some hope of keeping pace with the requirements which the advance of education in all departments of science impose on a profession desiring to preserve its prestige as a "learned" profession.

We look with much interest to the course which the Council of the Law Institution will take on this question. If they will endeavour—by persuasion or remonstrance, or, failing these, by appeal to the Legislature to obtain the restoration of these funds—they will gain the esteem and receive the support of the profession at large. Even among the recipients of these funds not a few are to be found, and those the *élite* of them, who feel some shame in offering as their own that hospitality which is provided at the sacrifice of the best interest of their profession.

C.

## LIST OF LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

19 & 20 Vict.

(Concluded from page 454).

85. An Act for carrying into effect certain Arrangements between the Trustees of the Renfrewshire

Turnpike Roads and the Lord Provost, Magistrates, and Council, and Police and Statute Labour Committee, of Glasgow; and for continuing in other respects the Acts relating to the said Roads.

86. An Act to enable the Morayshire Railway Company to construct a Railway from Orton to Craigellachie, and for other Purposes.

87. An Act for authorising Traffic Arrangements between the West End of London and Crystal Palace and the London, Brighton, and South Coast Railway Companies, the Regulation and Increase of Capital, and for other Purposes.

88. An Act to afford facilities to the Bagenalstown and Wexford Railway Company, for raising the funds necessary to enable them to execute their Undertaking, and for other Purposes.

89. An Act for more effectually repairing several Roads leading to and from the town of Monmouth, and for making several Lines of Road to communicate therewith, in the Counties of Monmouth, Gloucester, and Hereford.

90. An Act for the Improvement of Part of the District of St. Peter Bournemouth in the Parishes of Christchurch and Holdenhurst in the County of Southampton, and for providing a Pier there.

91. An Act for better supplying with Water the City of Edinburgh and Town and Port of Leith and places adjacent.

92. An Act for making a Railway from the Epsom Branch of the London, Brighton, and South Coast Railway to Epsom to Leatherhead.

93. An Act for incorporating the Salisbury Railway and Market House Company; for authorising them to make and maintain a Railway and a Market House at Salisbury; and for other Purposes.

94. An Act for making a Railway from the Stockfield Station of the Newcastle-upon-Tyne and Carlisle Railway to the Stockton and Darlington Railway, near Conside Ironworks, with a Branch to the Derwent Iron Company's Railway; and for other Purposes.

95. An Act to enable the Swansea Vale Railway Company to make Extension and Branch Railways, and for other Purposes.

96. An Act to repeal the Act for more effectually making, straightening, repairing, and improving the Roads from near the Town of Lewes to Polegate in the Parish of Hailsham, and from thence to Eastbourne, and to Polegate to Hailsham Common, in the County of Sussex, and to make other provisions in lieu thereof.

97. An Act for making and Maintaining a Turnpike Road from Conway to Llandudno in the County of Carnarvon, and for other Purposes.

98. An Act for making a Railway from Dunfermline to Killairne with a Branch to Kingseat in the County of Fife, to be called "The West of Fife Mineral Railway."

99. An Act for making a Railway from the Town of Maybole to the Town and Harbour of Girvan, to be called "The Maybole and Girvan Railway."

100. An Act for making a Railway from the South Wales Railway near Brinspall in the Parish of Awre to Howbeach Valley in the Forest of Dean, with Branches; and for other Purposes.

101. An Act for incorporating the Ceylon Railway

\* We believe that this sum is vastly over-estimated.—Ed.

tion of such candidate shall have been placed upon the screens hung in the halls, benchers' rooms, and treasury or steward's offices of each society fourteen days in term before such call.

80. That it is expedient that the name and description of every such candidate should be sent to the other inns of court, and should also be screened for the same space of time in their respective halls, benchers' rooms, and treasury or steward's offices.

81. That it is expedient that the above regulations as to screening names, &c., should be applied to members seeking certificates to practise as special pleaders, conveyancers, or equity draftsmen.

82. That it is expedient that no call to the bar should take place except during term; and that such call should be made on the same day by the several societies, namely, on the sixteenth day of each term, unless such day happen to be Sunday, and in such case on the Monday after.

83. That all the foregoing rules and regulations shall come into operation on the first day of Trinity Term now next ensuing, and shall apply to all persons entering as students on and after that day, and also to all existing students who shall not by the first day of Trinity Term next have kept more than four terms; but all other students shall, if they desire it, be admitted to the benefit of the lectures and classes, and be entitled to submit themselves to the public examination upon the same terms and subject to the same regulations as are hereby made applicable to students entering on and after the first day of Trinity Term, 1852.

The committee have abstained from framing any scheme or making any suggestion as to the fees or dues charged by the inns of court to their respective members or the deposits on the entrance of students, as they consider that these are matters of internal arrangement, which may with more propriety be left to the discretion and regulation of the societies respectively.

We would particularly call attention to the 20th, 21st, and 22nd regulations, relating to *certificated conveyancers*, and would again suggest to the learned Benchers that this class of practitioners should be confined, like special pleaders and equity draftsmen, to drawing legal instruments, and advising on points of the law of real property, and the practice of conveyancing. Such a class of men, like the special pleaders, would be valuable; but at present, with some highly respectable exceptions, the course of proceeding of certificated conveyancers in negotiating loans, and transacting the details of conveyancing business, is most objectionable; and let it be recollected, that both in their conduct and their charges they are not, like solicitors, under the superintendence and control of the superior courts.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COURT OF APPEAL IN CHANCERY (IRELAND).

(19 & 20 Vic. c. 80).

1. Short title.
2. Interpretation of terms.
3. Appointment of judge of Court of Appeal.
4. Court of Appeal.

5. Title and rank of judge of Appeal Court.
6. Oath of office.
7. Appeals from Master of Rolls to Court of Appeal.
8. Powers and jurisdiction of Court of Appeal.
9. The jurisdiction of Chancellor transferred to Court of Appeal in relation to appeals.
10. Appeals from the Incumbered Estates Court shall be to Court of Appeal.
11. Appeals to be brought within three months, unless special leave obtained.
12. Court of Appeal and Master of Rolls may have assistance of common law judge.
13. Decision of majority of judges of Court of Appeal to bind.
14. Final appeal to House of Lords.
15. In the absence of judge of Appeal, Chancellor may exercise jurisdiction.
16. The Chancellor to regulate business of Court.
17. Saving of powers of Chancellor.
18. If Chancellor or Master of Rolls prevented from sitting, judge of Appeal Court may sit for him.
19. Salary of judge of Appeal Court.
20. Retiring pension to Vice-Chancellor.
21. Increased powers of making general orders expedient; 14 & 15 Vict. c. 15, repealed, save as to anything done, &c.
22. Existing orders to continue in force.
23. General orders how to be made.
24. Court empowered to make general orders for certain purposes.
25. General orders to be laid before Parliament.
26. Forms of proceeding may be settled.
27. Part of section 16 of 13 & 14 Vict. c. 89, repealed; after 1st January, 1857, masters may make orders for money.
28. Deficiency of suitors' fee fund to be supplied from consolidated fund.

The following are the title, preamble, and sections of the act:—

An Act to constitute a Court of Appeal in Chancery, and to amend the Law relating to Appeals from the Incumbered Estates Court in Ireland.

[29th July, 1856.]

WHEREAS it is expedient to constitute a Court of Appeal in Chancery, and it is also expedient to enable the said Court of Appeal to determine all Appeals from the Court of the Commissioners for the Sale and Transfer of Incumbered Estates in Ireland which may now be made to the Privy Council: Be it therefore enacted as follows.

1. This act may be cited for all purposes as the "Chancery Appeal Court (Ireland) Act, 1856."
2. In the construction of this act "Chancery" and "Court" shall mean the Court of Chancery in Ireland, and "Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the Custody of the Great Seal of Ireland; "Suit" shall include cause, cause petition, and petition matter,
3. It shall be lawful for her Majesty from time to time, by letters patent under the Great Seal of Ireland, to nominate and appoint a fit person who shall

have exercised the office of High Chancellor of Ireland, or who shall have practised at the Bar for not less than fifteen years, to be a judge of the Court of Appeal in Chancery, and every judge so nominated and appointed shall hold his office during good behaviour: provided always, that it shall be lawful for her Majesty to remove any such last-mentioned judge from his office upon an address of both Houses of Parliament.

4. The Chancellor, together with such judge for the time being appointed under this act, shall form the Court of Appeal in Chancery, and the Secretaries, Registrars, and other officers appointed to attend the Chancellor shall attend the said Court of Appeal and the respective judges thereof, as circumstances shall require and the Chancellor shall direct.

5. The said judge shall be styled "Lord Justice of the Court of Appeal in Chancery in Ireland," and shall as such have rank and precedence next after the Lord Chief Baron of the Court of Exchequer in Ireland; provided, however, that if the said judge shall have exercised the office of High Chancellor of Ireland he shall rank next after the Chancellor for the time being.

6. Every judge so appointed shall, previous to his executing any of the duties of his office, take the oath of office.

7. From and after the 1st of January, 1857, all decisions, decrees, or orders which shall thereafter be pronounced by the Master of the Rolls in any suit shall be subject to appeal to the said Court of Appeal; and it shall not be lawful to appeal to the Chancellor alone in relation to such decisions, decrees, or orders as aforesaid, anything herein contained, or any law or usage to the contrary notwithstanding; and from and after the said 1st of January, 1857, all rehearings of decisions, decrees, or orders made or to be made by the Chancellor shall be heard and determined by the said Court of Appeal: provided, that nothing herein contained in relation to the said Court of Appeal shall apply to appeals from decisions, decrees, or orders of the Master of the Rolls pronounced antecedently to the 1st of January, 1857, or to appeals from the Masters, but such appeals may be preferred as if the provisions of this act relating to the said Court of Appeal had not passed.

8. From and after the 1st January, 1857, all the jurisdiction of the court which is now possessed and exercised, or which but for the passing of this act would be possessed and exercised, by the Chancellor in Chancery, in relation to appeals from the Master of the Rolls or such rehearings as aforesaid, and all powers, authorities, and duties, as well ministerial as judicial, incident to such jurisdiction, now exercised and performed by the Chancellor, shall be then exercised and performed by the said Court of Appeal in relation to appeals and rehearings under this act.

9. Where, under any act of Parliament, any jurisdiction is vested in the Chancellor, or any power, authority, or duty, is to be exercised or performed by the Chancellor and under the directions of any act or by any usage such power, authority, or duty is or ought to be exercised or performed by the Chancellor acting judicially in the court, all orders made or to be made by the Chancellor in exercise of such jurisdiction, power, authority, or duty, shall be subject to appeal, and all such jurisdiction, power, authority, and duty, and the ministerial powers and authorities incident thereto or consequent thereupon, which are now exercised and performed by the Chancellor, shall from and after

the said first day of January, 1857, be had, exercised, and performed by the said Court of Appeal in relation to appeals and rehearings under this act: provided always, that, save as regards appeals and rehearings under this act, the Chancellor shall and may, whilst sitting alone, have and exercise the like jurisdictions, powers, and authorities as might have been exercised by the Chancellor if no Court of Appeal in Chancery had been created by, and no judge of appeals in Chancery had been appointed under this act.

10. All appeals which, by 12 & 13 Vict. c. 77, s. 51, or any act amending or continuing the same, are authorised to be made from the orders of the Commissioners or Commissioner for the Sale and Transfer of Incumbered Estates to the Privy Council in Ireland, shall from and after the said 1st January, 1857, be made to the Court of Appeal, and from and after the said 1st January, 1857, it shall not be lawful to make such appeals to the Privy Council; and the Court of Appeal in Chancery shall have the same power of hearing and determining such appeals as is by the said 12 & 13 Vict., or any act amending or continuing the same, given to the Privy Council, and the costs of such appeals shall be in the discretion of the Court of Appeal.

11. Appeals and rehearings under this act to the said Court of Appeal may be brought without leave of the court at any time within the period of three months from the time when the decision, decree, or order complained of was made, or shall have taken place, anything in sect. 30 of the Court of Chancery (Ireland) Regulation Act, 1850, to the contrary notwithstanding, but that after the expiration of the period aforesaid, no such appeal or rehearing shall be brought, unless with the special leave of the court.

12. It shall be lawful for the said Court of Appeal, and for the Master of the Rolls, and for each of the said jurisdictions, to sit, with the assistance of any judge of her Majesty's Courts of Common Law in Ireland, upon the request of the Chancellor, if any such common law judge shall find it convenient to attend upon such request; and any such common law judge so attending the said Court of Appeal shall, as regards the matters heard before the said court, be deemed a judge of the said Court of Appeal.

13. The decision of the majority of the judges of the Court of Appeal, including such judge so attending as aforesaid, shall be taken and deemed to be the decision of the said court; and if the judges of the court be equally divided in opinion on any matter brought before the court by way of appeal, or reheard, the decree or order appealed from or reheard shall be taken and deemed to be affirmed by the Court of Appeal.

14. All decisions, decrees, or orders of the Court of Appeal, whether on appeals in Chancery or from the said commissioners, shall be subject to appeal to the House of Lords in the cases and under the conditions in and under which the like decisions, decrees, or orders of the Chancellor would have been subject to such appeal if this act had not been passed.

15. All the jurisdiction, powers, and authorities of the said Court of Appeal may, in the unavoidable absence of such judge of appeal to be appointed under this act, be exercised by the Chancellor sitting alone, or with such common law judge as aforesaid at such Court of Appeal.

16. The Chancellor shall fix the times at which the judge of the said Court of Appeal appointed under this act shall sit with the Chancellor, and generally make such regulations as to him may seem proper for

regulating the business of the said Court of Appeal, and for the attendance of a registrar of the said Court of Chancery at the sittings of the said Court of Appeal.

17. Nothing herein contained shall affect any of the powers, duties, or authorities attached to the office of Chancellor or exercised by the Chancellor as Keeper of the Great Seal of Ireland (except the powers, authorities, and duties which are exercised and performed by him in relation to the appeals and rehearings to which this act relates), or shall create any right of appeal, or affect the powers, authorities, and duties of the Chancellor at the common law or petty bag side of the court, or in relation to bankruptcy, or under the laws or statutes relating to bankrupts and bankruptcy, or under and by virtue of any appointment under the sign manual of the Crown, as having the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, or in relation to letters patent, grants, or writings passed or to be passed under the Great Seal of Ireland, or the revocation of such letters patent, grants, or writings, or the powers and authorities of the Chancellor in right or on behalf of her Majesty, as visitor of any charity or other foundation, or to the powers of the Chancellor of appointment to, or removal from or otherwise, in relation to offices in the court or other offices, save as herein specially provided.

18. And in case the Chancellor or Master of the Rolls shall be prevented by illness or otherwise from sitting at any time when, according to ordinary course, his court would be open, or if the state of business of the court or other circumstances should render it expedient and proper, the Chancellor may, by writing under his hand, from time to time, as often as occasion may require, authorise the Judge of the said Court of Appeal to sit for the hearing and determining of causes and matters; and the judge sitting under such authority as aforesaid shall have all the power, authority, and jurisdiction of the Lord Chancellor and Master of the Rolls for the hearing and determining of causes and matters, and may, for the purpose of disposing of any cause or matter which has been partly heard by him, continue such his sittings, notwithstanding the Chancellor or Master of the Rolls, in whose stead he has partly heard such cause or matter, may also be sitting for the hearing of other causes or matters; and all decrees and orders made by such judge in pursuance of such authority, shall be of the same effect and validity, and subject to revision and appeal, in the same manner, in all respects, as if made by the Chancellor or Master of the Rolls, as the case may be.

19. It shall be lawful for her Majesty to direct that there shall be paid to the Judge of Appeal to be appointed under this act, a salary not exceeding £1000, in case such judge shall be in the receipt of any salary or pension as exercising or having exercised a judicial office in any of the superior courts of law, equity, or in the Court of Prerogative, and over and above and without prejudice to any such salary or pension; and in case the person to be appointed Judge of the Court of Appeal under this act shall not be in the receipt of any such salary or pension, such person, on being appointed by letters patent under this act, shall be entitled to and shall be paid the net yearly salary of £4000.

20. Her Majesty, by letters patent under the Great Seal of the United Kingdom, may grant unto any person executing the office of Judge of Appeal, in pursuance of this act, who shall not be in receipt of

any such pension, an annuity not exceeding £2,666 18s. 4d.

21. Whereas it is expedient that the court should have increased powers of making general orders to reform and regulate its procedure and practice, with a view to economy, simplicity, and expedition, and that the existing law as to the mode of making general orders of the court should be amended: Be it therefore enacted, that the 14 & 15 Vict. c. 15 is hereby repealed, save as to anything done or proceeding commenced under the same.

22. All general orders of the court or masters, in force at the passing of this act, shall continue in force unless altered by, or inconsistent with, the general orders to be made under this act.

23. The power of making, rescinding, and varying general orders in relation to all proceedings in the court, and to all business to be transacted by the court and the judges and officers of the court, shall be deemed to be a power at all times appertaining and incidental to the jurisdiction of the court, and such power shall be exercisable by the Chancellor, by and with the advice and assistance of the Master of the Rolls and the Judge of Appeal, or of either of them, anything in any act or acts prescribing a different method of making such general orders to the contrary notwithstanding, and shall be exercisable as well in relation to all matters now falling within the jurisdiction of the court as to all matters which may hereafter be brought within such jurisdiction.

24. In addition and without prejudice to the power which the Court now has of making general orders in relation to any matters within its jurisdiction, the Court may, in manner aforesaid, make, rescind, and vary general orders for regulating the times and form and mode of procedure, the division and distribution of business, the formalities to be observed upon transfers and sales of stock and payments and investments of cash, the lodgment of deeds and papers, the substitution of or dispensing with service of notices or process upon any person, the examination of witnesses and parties, the examination, cross-examination, and re-examination of persons making affidavits to be used in any cause or matter, for determining the necessary parties to any cause or matter, and for regulating the employment of conveyancing or other counsel, valuers, surveyors, engineers, accountants, marshals, actuaries, and other skilled persons, and the costs, fees, and allowances to be paid or allowed to solicitors or other persons, and for ensuring the despatch of business by requiring returns of the state thereof from any judge or officer or otherwise, and for transferring the conduct of proceedings, and for allowing proceedings to be taken or acts done, notwithstanding the proper time for taking or doing the same may have elapsed, and for enlarging the time for any such act, and for supplying omissions or correcting errors in proceedings, and for regulating the security to be given by receivers, or altering the existing mode of giving such security, and substituting any new mode, either generally or as regards particular cases, and for regulating the appointment and remuneration of receivers, and the management of estates under receivers, and in relation to any other matter or thing whatsoever incident to the business of the Court, whether of the kind hereinbefore specified or not; and such orders shall take effect at such time as may be therein specified, or, in default of such specification, from the time of the making thereof.

25. Such general orders shall be laid before Parliament within the time and subject to the provisions

in all respects in that behalf specified and contained in the "Court of Chancery, Ireland, Regulation Act, 1850," in relation to the general orders to be made by the Chancellor, with the assistance of the Master of the Rolls, under that act.

26. The Chancellor may, with the advice and assistance of the Master of the Rolls and the Judge of Appeal, or of either of them, from time to time frame and cause to be printed and circulated forms of proceedings and documents in relation to the business of the court, and may direct any proceedings or documents to be printed and made available for the use of all parties interested.

27. So much of section sixteen of the "Court of Chancery, Ireland, Regulation Act, 1850," as provides that the Master, in cases within the said section, shall not make orders for the distribution or payment of any share of money, shall from the 1st of January, 1857, be repealed, and from and after the said 1st January, 1857, the Masters shall in all cases to which the said section applies have and exercise the jurisdiction by the said section conferred upon them, without any such restriction as aforesaid.

28. In case the account now standing to the credit of the Accountant General of the Court in the books of the Bank of Ireland, termed the Sutors' Fee Fund Account, should be inadequate to the payment of the charges now chargeable thereon, the amount of such charges beyond what can be so satisfied thereout shall be charged and chargeable and paid and payable upon and out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, by way of advance in aid of the said Sutors' Fee Fund Account.

#### CURSITOR BARON.

(19 & 20 Vict. c. 86.)

The following are the title, preamble, and section of the act:—

An Act to abolish the Office of Cursitor Baron of the Exchequer. [29th July, 1856.]

WHEREAS the office of Cursitor Baron of her Majesty's Court of Exchequer at Westminster is now vacant by the death of the Right Hon. George Bankes, and the duties thereof having for the most part ceased, it is expedient that such office be abolished: Be it enacted as follows:—

1. The said office of Cursitor Baron is hereby abolished, and any duty or act which might have been performed or done by such Cursitor Baron, if this act had not been passed, shall and may be performed and done by the said court, or any baron of the coif, or any officer of the said Court of Exchequer, in such manner and at such times as the said court or the Lord Chief Baron thereof shall from time to time direct.

#### CORRUPT PRACTICES PREVENTION.

(19 & 20 Vict. c. 84.)

The following are the title, preamble, and section of the act:—

An Act to continue the Corrupt Practices Prevention Act, 1854. [29th July, 1856.]

WHEREAS an act was passed in the session of Parliament 17 & 18 Vict. c. 102, "To Consolidate and Amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parlia-

ment;" and it was thereby provided that such act should continue in force for one year next after the passing thereof, and thenceforth to the end of the then next session of Parliament; and whereas it is expedient that the said act should be continued: Be it enacted as follows:—

1. The said act shall be continued until the 10th day of August, 1857, and thenceforth to the end of the then next session of Parliament.

#### STAMPING BANKERS' DRAFTS.

SOME questions have arisen regarding the power of affixing a penny stamp on a banker's draft after it has been issued in order to transmit it beyond the fifteen miles, within which no stamp is required. We therefore subjoin the three sections of the 17 & 18 Vict. c. 83, which relate to these important negotiable instruments.

The 7th section recites that under and by virtue of certain acts relating to stamp duties certain drafts or orders for the payment of any sum of money to the bearer on demand, drawn upon any banker or person acting as a banker residing or transacting the business of a banker within fifteen miles of the place where such drafts or orders are issued, are exempted from all stamp duty, and that it is expedient to prevent the negotiating or circulating of such drafts or orders unstamped at any place beyond the distance of fifteen miles from the place where the same are made payable; and it is enacted "that no such draft or order as aforesaid shall, unless the same be duly stamped as a draft or order, be remitted or sent to any place beyond the distance of fifteen miles in a direct line from the bank or place at which the same is made payable, or be received in payment, or as a security, or be otherwise negotiated or circulated at any place beyond the said distance; and if any person shall remit or send any draft or order not duly stamped as aforesaid to any place beyond the distance aforesaid, or shall receive the same in payment or as a security, or in any manner negotiate or circulate the same at any such last-mentioned place, he shall forfeit the sum of £50.

But the 8th section provides that it shall be lawful for any person who shall receive any such draft or order as aforesaid, at any place within the said distance of fifteen miles from the bank or place at which the same is made payable, which draft or order shall have been lawfully issued unstamped, to affix thereto a proper adhesive stamp, and to cancel such stamp by writing thereon his name, or the initial letters of his name, and thereupon such draft or order may lawfully be received and negotiated at any place beyond the distance aforesaid, anything herein contained notwithstanding.

Then the 10th section enacts that the adhesive stamps provided by the Commissioners of Inland Revenue for denoting the duty of 1d. payable on receipts and on drafts or orders for the payment of money to the bearer or to order on demand respectively may lawfully be used for the purpose of denoting the like amount of duty, either on a receipt or on such draft or order as aforesaid, without regard to the special appropriation thereof for the other of such instruments by having its name on the face thereof, anything in any act or acts contained to the contrary notwithstanding.

## LAW OF ATTORNEYS.

## LIABILITY TO ACCOUNT TO THIRD PERSONS FOR MONIES RECEIVED ON BEHALF OF CLIENT.

A BILL of exchange for £524 odd, drawn by Barton and Co., and accepted by Ainsworth and Co., had been indorsed to the plaintiffs, who discounted it for Barton and Co. Before it became due, Ainsworth and Co. stopped payment, and ultimately made a composition with their creditors, whereby it was arranged that they should pay 18s. 4d. in the pound, viz., 5s. in cash, and the remainder by promissory notes at various dates, payable to the order of Barton, and indorsed by him in all cases where his name was on the original billa. Barton and Co. were unable to take up the bill for £524 upon maturity, but on the day appointed for payment of the dividend by Ainsworth and Co., Barton called on the plaintiffs, and obtained the bill from them, in order to procure the dividend, and handed it together with other bills to the defendant, who was an attorney, and acted for him in his arrangement with Ainsworth and Co., obtaining an advance of £200 in anticipation of the dividend. The defendant received the dividend and a promissory note for the remainder of the composition, debiting Barton with the advance, and crediting him for the dividend.

The plaintiffs then brought trover, and on the trial before *Willes, J.*, a verdict was found for the defendant, whereupon a rule was obtained, upon leave reserved to enter it for the plaintiffs.

*Pollock, L. C. B.*, said: "The rule must be discharged. I am of opinion that the view taken by the learned judge was correct. All that was done by the defendant was done by him in a ministerial capacity. I cannot treat an overdue bill of exchange in the hands of the drawee, he being a party to it, and the apparent owner, like a horse or a chattel in the hands of one who is not the owner. An overdue bill, drawn by A. on B., in the hands of a stranger, is a different matter. There the bill was returned by the plaintiffs, the indorsees to Barton, the drawer, with all the names, except those of Barton and the acceptor, struck out. What the defendant did, was done by Barton's authority, and as his servant. The defendant was not aware, and had no means of knowing, that Barton was not the real owner of the bill. He advanced money on it, and he was justified in doing so, because the bill was in the hands of the drawee, who had an apparent right to it. He stopped a portion of the money received to repay the advance which had been made by him. What he did in getting payment for the bill was merely done by him as Barton's agent, and cannot be treated as the act of a wrongdoer."

*Symonds v. Atkinson*, 1 Hurlstone and N. 146.

## NOTES ON THE COMMON LAW PROCEDURE ACT, 1852.

## SUGGESTION ON DEATH OF CLAIMANT IN EJECTMENT.

On the trial of an action of ejectment, a verdict was taken for the claimant, subject to a special case, but after the special case was set down for argument, and before the case had come on in its turn, the claimant died.

The court said that the case would keep its place in the paper, but that the argument would not be heard until a suggestion of the death of the claimant

had been entered by his legal personal representative, pursuant to the 15 & 16 Vict. c. 76, s. 194.

*Dennison v. Holiday*, 1 Hurlstone and N. 61.

## SERVICE OF WRIT UNDER S. 18 ON DEFENDANT IN ENGLAND.

A writ of summons was issued on November 2, 1852, against the defendant, who was believed to be in France, in the form prescribed by the 15 & 16 Vict. c. 76, s. 18, and in February, 1853, the plaintiff's attorney applied to the defendant's attorney for an undertaking to appear, which he refused. On March 19, the defendant's attorney entered an appearance, but the plaintiff's attorney, not being aware of such appearance having been entered, renewed the writ from time to time, and on March 13, 1856, served the defendant with a copy at Leamington. It appeared that the defendant had continually resided in England since September, 1851.

The court held that there was no ground for setting aside the proceedings.

*Green v. Braddell*, 1 Hurlstone and N. 69.

## THE NEW SOLICITOR-GENERAL.

THE Right Hon. James Archibald Stuart Wortley, M.P., has been appointed Solicitor-General in the room of Sir Richard Bethell, appointed Attorney-General. Mr. Wortley was called to the bar by the Hon. Society of the Inner Temple, 21st January, 1831, and went the northern circuit; he became a Queen's counsel in 1841; and was Judge Advocate General from Jan. to July, 1846. He was appointed Solicitor-General to the late Queen Dowager in 1845, and held that office until her Majesty's death in December, 1849. He was elected by the City of London as Recorder, September, 1850, and is standing counsel to the Bank of England.

The right hon. gentleman is the third son of the first Baron Wharnccliffe; his mother was a daughter of the first Earl of Erne. He was born in St. James's-square, July 3rd, 1805. He was educated at Christ Church, Oxford, where he graduated; B.A. in 1826, and M.A. 1831. He was elected M.P. for Halifax in 1835, but ceased to represent that borough in 1837, and was elected M.P. for Bute in 1842, which place he has represented ever since. In 1845, he took office under Sir Robert Peel's Government as Attorney-General of the Duchy of Lancaster; in 1846, he became a member of the Privy Council. On the 6th of May, 1846, he was married to the Hon. Jane Lawley, only daughter of the first Baron Wenlock. He is uncle to the present Lord Wharnccliffe, who succeeded his father, the second baron (Mr. Stuart Wortley's elder brother), in 1845. His family is a younger branch of that of the Earl of Bute; his grandfather (Mr. James Stuart Wortley Mackenzie), whose last two names were taken with property which he acquired by marriage and inheritance, being a second son of the third Earl of Bute by the daughter of the celebrated Lady Wortley Montagu.

By this appointment, the lucrative office of Recorder of London becomes vacant, and is vested in the Court of Aldermen. The present Common Serjeant, Mr. Russell Gurney, was second on the poll when Mr. Wortley was selected. Mr. Gurney, however, is not without a competitor. The names of Mr. Warren, Q. C., and Mr. Montague Chambers, Q. C., being Members of Parliament, are mentioned as under the consideration of the Court of Aldermen.

It is reported that there will be much competition

for the office of Common Serjeant. The next City judge in rank and rotation is Mr. Prendergast, the judge of the Sheriffs' Court, who will, no doubt, be a candidate, and some of the four City pleaders will also enter the lists. One of them, Mr. John Locke, has already announced his intention of standing for the higher office of Common Serjeant, without waiting for the chance of a vacancy in the Sheriff's Court. Mr. Bodkin, Mr. Serjt. Ballantine, and other counsel, are also named as probable candidates.

## WINTER CIRCUITS, 1856.

*Days and Places appointed for holding Special Commission of Oyer and Terminer and Gaol Delivery for the undermentioned Places:—*

*Cheshire*—Wednesday, December 8, at the Castle of Chester.  
*Southampton*—Saturday, November 29, at the Castle of Winchester.  
*Wiltshire*—Friday, December 5, at New Sarum.  
*Somersetshire*—Monday, December 8, at the Castle of Taunton.  
*Devonshire*—Thursday, December 11, at the Castle of Exeter.  
*City of Exeter*—The same day, at the Guildhall of the said city.

*Northumberland*—Monday, December 1, at the Castle of Newcastle-on-Tyne.  
*Town of Newcastle-upon-Tyne*—The same day, at the Guildhall of the said town.  
*Durham*—Wednesday, December 8, at the Castle of Durham.  
*Yorkshire*—Saturday, December 6, at the Castle of York.  
*City of York*—The same day, at the Guildhall of the said city.  
*Northamptonshire*—Thursday, December 4, at Northampton.  
*Glamorganshire*—Monday, December 1, at Cardiff.  
*Gloucestershire*—Thursday, December 4, at Gloucester.  
*City of Gloucester*—The same day, at the city of Gloucester.  
*Essex*—Thursday, December 11, at Chelmsford.  
*Kent*—Monday, December 15, at Maidstone.  
*Sussex*—Monday, December 22, at Lewes.  
*Staffordshire*—Monday, December 1, at Stafford.  
*Shropshire*—Monday, December 8, at Shrewsbury.  
*Hertfordshire*—Wednesday, December 10, at Hertford.  
*Worcestershire*—Saturday, December 13, at Worcester.  
*City of Worcester*—The same day, at the city of Worcester.  
*Oxfordshire*—Wednesday, December 17, at Oxford.  
*Lancashire*—Saturday, December 6, at Liverpool.

## ATTORNEYS TO BE ADMITTED.

*Hilary Term, 1857.*

### Queen's Bench.

<i>Clerks, Names, and Residences.</i>	<i>To whom articulated, assigned, &amp;c.</i>
Angell, George Bellamy, 1, Jungers ... ..	W. Hartcup, Bungay.
Ashley, George, 4, Regent's-square, and Davies-street, Berkeley-square ... ..	R. Knapp, Woodstock; B. Holloway, Woodstock.
Banks, William Henry, 2, Vincent-terrace, Islington; Gerrard-street; and Walsall ... ..	H. Barnett, Walsall.
Barritt, Robert, Bury ... ..	S. Woodcock, Bury.
Bartlett, William Smith, 10, Albion-street, Hyde-park; Stourbridge; and Worcester ... ..	Vernon and Minshall, Bromagrove.
Batte, William Donea, Bridgnorth ... ..	H. Vickers, Bridgnorth.
Beaven, Alfred, 10, Fitzroy-square; and Melksham ... ..	A. Gore, Melksham.
Beeching, John, 55, Acton-street, Gray's Inn-road; and Longton-grove, Sydenham ... ..	H. A. Gray, Hibernia Chambers, London Bridge.
Beever, Miles Branthwayt, 81, East-street, Red Lion-square	A. C. Sharland, Tiverton.
Bellott, William Cuthbert, Oldham ... ..	H. W. Litler, Oldham.
Birch, Henry John, 4, Holford-square, Pentonville; and Eaton-place ... ..	E. W. Paul, Exeter.
Bodenham, Frederick, 5, Oakley-terrace, Oakley-street, Chelsea; Leamington Priors; and Kington ... ..	B. Bodenham, Kington; A. S. Field, Leamington Priors; C. Meredith, Lincoln's Inn.
Bodwell, Arthur Benjamin, Hadleigh ... ..	H. Last, Hadleigh.
Boodle, William, 2, Somerset-place, Cheltenham ... ..	J. Packwood, Cheltenham.
Bowen, Lindsey Priestley, 21, Great George-street, Westminster; Birmingham; and Llandudno ... ..	S. Bray, Birmingham.
Brockman, Henry Julius, 19, Cloudeley-square, Islington; Lucas-street; and Folkestone ... ..	R. T. Brockman, Folkestone.
Brown, Jos., M'Grigor Aird, Sunderland ... ..	W. Young, Sunderland.
Burchell, William, 42, Upper Harley-street ... ..	W. Burchell, the elder, 42, Upper Harley-st.



*Clerks' Names and Residences.*

Bygott, Robert, Barton-upon-Humber ... ..  
 Chester, Edward, 144, Blackfriars-road, Southwark; and  
 Acre-lane, Brixton ... ..  
 Clayhills, Thomas, 26, Harrington-street North; Morning-  
 ton-crescent; Granby-street; and Darlington ... ..  
 Clegg, Charles, Bradford ... ..  
 Cole, Arthur William, 9, Kensington Park-terrace North;  
 Notting-hill; and Sutton ... ..  
 Coleman, Edward Mountford, 10, Alfred-street, Montpelier-  
 square; Brompton; and Birmingham ... ..  
 Cotman, Frederick, 1, Avenham-colonnade, Preston ... ..  
 Crossfield, William John, 2, Elizabeth-terrace, Hackney-road  
 Day, Edmund Stainton, Isleworth ... ..  
 Dean, Thomas, 28, Bloomsbury-square ... ..  
 Drake, Henry, 88, Walbrook; and Croydon ... ..  
 Drinkwater, Frederick, Hyde ... ..  
 Ebsworth, John, 16, Gloucester-gardens, Camden New Town  
 Farrington, Henry Borrow, 38, Kenton-street, Brunswick-  
 square ... ..  
 Fell, William, 4, Wharton-street, Islington; and Whitehaven  
 Fenn, Samuel, B.A., Blackheath-park ... ..  
 Fisher, Charles Francis, Great Yarmouth; and Ventnor ... ..  
 Flux, William, 8, Westbury-road, Paddington; and Newgate-  
 street ... ..  
 Folkard, William, 11, Woburn-place, Russell-square; and  
 Brighton ... ..  
 Freeland, Parker William, 15, Westbourne Park-terrace,  
 Paddington ... ..  
 Fryer, Charles, 13, East Parade, Leeds ... ..  
 Garrod, Henry Edwin, 152, Cambridge-street, Pimlico; and  
 Halesworth ... ..  
 Giraud, Edward Jacob, 11, Calthorpe-street, Gray's Inn-  
 road; and Tonbridge ... ..  
 Golding, Thomas Zachariah, 5, Victoria-terrace, Stockwell.  
 Goldney, Gabriel, the younger, 13, Mortimer-terrace,  
 Kentish-town; and Chippenham ... ..  
 Gole, Russell, Park House, Grove-road, Mile-end ... ..  
 Gregory, Charles, Eyam ... ..  
 Hammond, Frederick William, 8, Upper Gordon-street,  
 Gordon-square ... ..  
 Hammond, William, 16, Furnival's Inn; and Wentworth  
 Lodge, Finchley ... ..  
 Harria, Charles Rice, Tredegar ... ..  
 Harris, John Parsons, Stockton-upon-Tees; and Launceston  
 Hartley, James, 88, Guildford-street; Shrewsbury; and  
 Thames Ditton ... ..  
 Harvey, Thomas Henry, 9, London-street, Hyde Park; 8,  
 St. George's-villas, Compton-road, Highbury; and  
 Liverpool ... ..  
 Hayward, Thomas, 84, Harrington-square ... ..  
 Hewitt, William Hope, 20, Bond-street, Manchester; and  
 Bowdon ... ..  
 Hinckley, Frederick, Lichfield ... ..  
 Hiron, Thomas Eden, 44, Alfred-street, City; Coleman-  
 street; and Evesham ... ..  
 Holt, James John, 81, Dalston-terrace, Dalston ... ..  
 Howell, David, 12, Torriano-grove, Kentish Town ... ..  
 Hullett, John, Coleford ... ..  
 Jones, Richard, 9, Chester-place, Kennington-road ... ..  
 Kent, Francis Roylance, Thames Ditton; and Shrewsbury  
 Lambert, James William, 16, Holford-square; and Bedford-  
 row ... ..  
 Learoyd, Nehemiah, 18, St. Paul's-street, Huddersfield ... ..  
 Lee, Frederic Coope, 17, Inverness-road, Bayswater ... ..  
 Lewis, Thomas, 140, Cambridge-street, Pimlico; York-  
 buildings; and Buckland, near Dover ... ..

*To whom articulated, assigned, &c.*

W. H. Goy, Barton-upon-Humber.  
 C. Chester, Blackfriars-road.  
 H. Hutchinson, Darlington; J. Williamson  
 Great James-street.  
 J. Clegg, Bradford.  
 W. Sharpe, Bedford-row.  
 W. P. Allocock, Birmingham.  
 C. B. Walker, Preston.  
 J. Hollams, Mincing-lane.  
 T. Cooper, Lincoln's-inn-fields.  
 J. W. Dean, Bloomsbury-square.  
 F. Drake, Walbrook.  
 J. Hibbert, Godley.  
 E. W. Scadding, Gordon-street, St. Pancras.  
 T. Part, Wigan.  
 J. Postlethwaite, Whitehaven.  
 J. M. Dale, Gray's-inn-square.  
 J. G. Fisher, Great Yarmouth.  
 W. T. Prichard, Christ-Church, Chambers,  
 Newgate-street.  
 S. Clarke, Brighton.  
 G. W. Andrews, Sudbury; F. T. Gosling,  
 Gray's-inn-square.  
 J. Richardson, York.  
 J. Crabtree, Halesworth.  
 W. Gorham, Tonbridge.  
 E. Mackeson, Lincoln's-inn-fields.  
 G. Goldney, Chippenham.  
 J. Gole, Lime-street.  
 E. Lambert, John-street, Bedford-row.  
 J. Hammond, Leominster.  
 H. Hammond, Furnival's-inn.  
 J. G. H. Owen, Pontypool.  
 J. Darke, Launceston; J. Dodda, Stockton-  
 upon-Tees.  
 W. W. How, Shrewsbury; T. Johnston,  
 Raymond-buildings.  
 T. Harvey, Liverpool.  
 H. R. Hill, Throgmorton-street; G. M.  
 Hughes, St. Swithin's-lane.  
 J. Hewitt, Manchester.  
 T. Hodson, Lichfield.  
 G. Eades, Evesham.  
 B. Hastie, Northampton-sq.; J. J. Spiller,  
 Lothbury; R. H. Atkinson, Carey-st.  
 H. Young, Serjeant's-inn; A. Warrand,  
 Basinghall-street.  
 W. Roberts, the younger, Coleford.  
 J. Dangerfield, Craven Street.  
 E. J. Kent, Liverpool; J. J. Peele, Shrews-  
 bury.  
 R. Lambert, Bedford-row.  
 A. Bantoft, Huddersfield; T. W. Clough,  
 Huddersfield.  
 T. French, Eye.  
 E. Knocker, Dover.

*Clerks' Names and Residences.*

Litchfield, Robert William, Newcastle-under-Lyme ...  
 Lloyd, Henry Hume, 15, Great James-street; and Thorn-  
 bury ... ..  
 Longstaffe, William Hylton, Gateshead ... ..  
 Lott, Joseph, 19, Clarence-cottages, Rotherfield-street,  
 Islington; and George-street, Mansion-house ...  
 Middlemas, Robert, Alnwick ... ..  
 Millman, William, 18, Sutherland-terrace, East Brixton ...  
 Mitton, Edward, Edgbaston ... ..  
 Morris, David William, 17, William-street, Hampstead-  
 road; John's-row; and Merthyr Tydfil ... ..  
 Morton, James, the younger, 10, King's-road, Gray's Inn-  
 lane; and Holbeach ... ..  
 Moseley, Henry Kingdon, 11, Brunswick-square, Camberwell  
 Nelson, Charles Thomas, Lozell's-lane, Aston, near Birming-  
 ham ... ..  
 Norris, George Goodwin, 15, Powell-street, Goswell-street-  
 road; and Nottingham ... ..  
 Norton, Edmund Palmer, 44, Regent's-square; and  
 Lowestoft ... ..  
 Norton, Francis, 12, President-street West, Goswell-road ...  
 Oldman, Thomas Hugh, 22, Myddelton-square, Clerkenwell;  
 and Gainsborough ... ..  
 Orford, William, 6, Bond-street, Manchester ... ..  
 Phipos, Thomas James, 8, Lavender-villas, Malvern-road,  
 Dalston; and Chancery-lane ... ..  
 Pope, Jonathan Henry Cundy, Minna-villa, Islington; and  
 Plymouth ... ..  
 Potter, Henry Cipriani, 39, Inverness-terrace, Hyde-park  
 Procter, Charles Edward, Macclesfield ... ..  
 Quarrell, William Chance, the younger, 17, Percy-circus,  
 Islington; and Worcester ... ..  
 Richards, John Charles, 11, Queen-street, Gloucester ...  
 Richardson, John, 29, Upper Stamford-street, Blackfriars-  
 road; and Northumberland-place ... ..  
 Riley, Samuel William, Kingston; and Ryde ... ..  
 Robinson, William, 84, Surrey-street, Strand; Lincoln's  
 Inn-fields; and Eccleshall ... ..  
 Robotham, Alpheus Henry, Derby ... ..  
 Rogers, Joseph Roberts, 53, Lincoln's Inn-fields; and  
 Helston ... ..  
 Roper, George Edward Trevor, 9, Huntley-street, Bedford-  
 square; Brussels; and Plas Teg Mold ... ..  
 Sangster, John William, Leeds ... ..  
 Seymour, Arthur, Warwick; and Coventry ... ..  
 Sheppard, John Francis, Towcester ... ..  
 Shilson, William Dinham, 35, Bury-street, St. James's ...  
 Sikes, Thomas Boyfield, the younger, 35, Weymouth-street,  
 Portland-place; New Boswell-court; and Melton  
 Mowbray ... ..  
 Simon, Robert, Oswestry ... ..  
 Skipsey, Appleton Robinson, Sunderland ... ..  
 Slann, Thomas Holloway, Holt ... ..  
 Smith, Samuel, Chester ... ..  
 Thomson, Christopher Gardner, 3, Bartholomew-place,  
 Kentish Town; and Rochester-road ... ..  
 Toy, William, Ashton-under-Lyne ... ..  
 Turner, George, the younger, 80, Charles-street, City-road ...  
 Waistell, Charles, 7, Northumberland-street, Strand; and  
 Dunstable ... ..  
 Warner, Powel, 13, Highbury-terrace, Islington ... ..  
 Wawn, Christopher, South Shields ... ..  
 Weston, Henry, 5, Waverley-place, St. John's-wood ... ..  
 Whitcombe, George, Gloucester; and Chester ... ..  
 White, Arnold William, 9, Craven-hill-gardens, Bayswater;  
 and Great Marlborough-street ... ..  
 Williams, Robert Wynn, Denbigh ... ..  
 Willoughby, Henry William, 4, Bedford-square ... ..  
 Wright, Charles, Sunderland ... ..

*To whom articulated, assigned, &c.*

R. Slaney, Newcastle-under-Lyme.  
 E. Lloyd, Thornbury; T. Crossman, Thorn-  
 bury.  
 W. Kell, Gateshead.  
 N. Gedy, George-street, Mansion House.  
 J. A. Wilson, Alnwick.  
 G. Fitch, Southampton-street.  
 H. Holland, deceased, West Bromwich; J.  
 Smith, Birmingham.  
 J. W. Russell, Merthyr Tydfil.  
 E. Key, Holbeach.  
 T. Moseley, Bedford-street; W. M. Tayler,  
 Bedford-street.  
 H. Southall, Birmingham.  
 A. Parsons, Nottingham.  
 E. Norton, Lowestoft.  
 L. Norton, deceased, Jewin-street.  
 T. Oldman, Gainsborough.  
 N. Earle, Rusholme, near Manchester.  
 J. Johnston, Chancery-lane.  
 G. Fridham, Plymouth; F. W. P. Cleverton,  
 Plymouth.  
 J. Leman, Lincoln's-inn-fields.  
 E. Procter, Macclesfield.  
 R. J. Roberts, Worcester.  
 G. Jones, Gloucester.  
 E. Foster, Cambridge.  
 W. Butt, Ryde; J. Johnson, Ryde.  
 T. Robinson, Eccleshall.  
 W. Robotham, Derby.  
 T. Rogers, Helston.  
 W. B. Collis, Stourbridge.  
 J. Sangster, Leeds.  
 J. Brewster, Middlesborough; T. Dewes,  
 Coventry.  
 J. H. Sheppard, Towcester.  
 W. Shilson, St. Austel.  
 J. Hawkins, Clapham.  
 R. J. Croxon, Oswestry.  
 W. Young, Sunderland.  
 J. M. Webb, Holt; G. Wilkinson, Holt.  
 J. Walker, Chester.  
 R. Wilson, Kendal.  
 H. Gartside, Ashton-under-Lyne.  
 G. Turner, Charles-street; J. P. W. Cooke,  
 Gloucester.  
 C. S. Benning, Dunstable.  
 E. Futvoye, John-street.  
 R. Brown, Sunderland; C. A. Wawn, South  
 Shields.  
 R. Bloxam, New Boswell-court; E. Bloxam,  
 New Boswell-court.  
 J. A. Whitcombe, Gloucester; T. Helpe,  
 Chester.  
 R. J. P. Broughton, Great Marlborough-st.  
 P. Morris, Denbigh.  
 T. Cox, Clifford's-inn.  
 J. J. Wright, Sunderland.

## NOTICES OF ADMISSION in and on the last Day of Hilary Term, 1857, pursuant to Judges' Orders.

Clerks' Names and Residences.

To whom articulated, assigned, &amp;c.

Atkinson, Thomas Swainson, 61, Acton-street; 1, Church-street; Surrey; and Manchester ... ..	T. Swainson, Lancaster.
Baker, Robert Ivey, 13, Bartlett's-buildings, Holborn; and Wolverhampton ... ..	C. Corser, Wolverhampton.
Baylis, Charles, 16, Clarendon-road-villas, Kensington-park, Notting-hill ... ..	R. Roy, Lothbury.
Harris, William Henry, Birmingham ... ..	W. H. Reece, Birmingham.
Moojen, Frederick, 1, Lansdowne-terrace, Hackney ... ..	W. A. S. Pemberton, Southampton-street.
O'Donoghue, Henry O'Brien, 28, Thornhill-crescent, Barnsbury-park; and Cotham, near Bristol ... ..	Bloomsbury-square.
Owen, John, Wolverhampton ... ..	J. W. E. Hall, Ross.
Sera, Peter, 13, Bernard-street, Regent's-park ... ..	T. Bolton, Wolverhampton.
	W. T. Manning, Great George-street.

## APPLICATIONS FOR RE-ADMISSION in Hilary Term, 1857.

King, William Henry, 34, Bloomsbury-square; and Burton-crescent.  
Fuller, Joseph Bury, 1, Crescent-place, Edward-street, Birmingham.

## PROFESSIONAL LISTS.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From September 23rd to November 21st, 1856, both inclusive, with dates when gazetted.

Curwood, Capel Augusta, and Robert Moore, Great Tower-street, City, attorneys—Nov. 18.  
Edmonds, George, and Alfred Walter, Birmingham, attorneys and solicitors—Oct. 28.  
Hemill, Henry, and Alfred Francis Barnard, Diss, Norfolk, attorneys and solicitors—Oct. 28.  
Keightley, Archibald, Robert Cunniffe and Henry Arthur Beaumont, 43, Chancery-lane, attorneys, solicitors, and agents, so far as regards the said Archibald Keightley—Nov. 18.  
May, James Bowen, and John Park Sweetland, 14, Queen-square, Bloomsbury, attorneys and solicitors—Oct. 31.  
Ware, John, and Thomas Ware, 98, Kingsland-road, attorneys and solicitors—Oct. 31.

## NOTES OF THE WEEK.

## THE NEW CHIEF JUSTICE.

It being known that Sir Alexander Cockburn would take his seat for the first time as Lord Chief Justice, the court was densely crowded, the bar being closely filled by counsel. At half-past ten his lordship entered the court with Mr. Justice Cresswell and Mr. Justice Crowder, when the oaths of allegiance, abjuration, and supremacy were administered by one of the Masters of the Court, the Judges and the whole of the Bar standing. His lordship having subscribed the oaths, bowed to the Bar, and took his seat, calling upon "Brother Channell" to move, but as Brother Channell and several other learned brothers had nothing to move, Mr. Serjeant Thomas had the honour of making the first motion before Sir Alexander.

## THE NEW PEER.

It is fully believed that Sir Alexander Cockburn will be called to the Upper House by the title of Baron Langton. Mr. Edwin James, at the public meeting at Southampton on Wednesday night, spoke of the Chief Justice as the "now Lord Langton."

## BOARD OF INLAND REVENUE.

The vacancies consequent on the death of Mr. Wood have been thus filled up:—Mr. Pressly has been appointed chairman, and Mr. Herries, who has

been for twelve years one of the commissioners, deputy chairman; Mr. Spencer Ponsomby takes the seat of Mr. Herries.

## SOLICITORS ELECTED AS MAYORS.

Bath ... ..	Robert Cook.
Bewdley ... ..	J. W. T. Lea.
Bolton-le-Moors ... ..	James Knowles.
Bridgwater ... ..	John Ruddock.
Chesterfield ... ..	William Drabble.
Clitheroe ... ..	Henry Hall (re-elected).
Edinburgh ... ..	Mr. John Melville, Writer to the Signet, re-elected Lord Provost.
Exeter ... ..	William Buckingham.
Haverfordwest ... ..	William Rees.
Hull ... ..	William Henry Moss.
Ludlow ... ..	Francis Richard Southern.
Plymouth ... ..	F. F. Bulteel.
Salford ... ..	Mr. Stephen Heelis (re-elected).
Wakefield ... ..	Henry Brown.
Walsall ... ..	William Thomas.
York ... ..	Mr. Edward Richard Anderson (Lord Mayor).

## LAW APPOINTMENTS.

Mr. Serjeant Kinglake, of the Western Circuit, has been appointed Recorder of Bristol, in the room of Sir A. J. Cockburn. Mr. Kinglake is also Recorder of Exeter. He was called to the Bar by the Hon. Society of Lincoln's Inn on the 8th of February, 1830.

Henry Davison, Esq., Barrister-at-Law, has been appointed a puisne judge of the Supreme Court at Madras. Mr. Davison was called to the Bar by the Hon. Society of the Inner Temple on the 6th of May, 1834, and went the South Wales and Chester Circuit.

Robert G. M. Sumner, Esq., Barrister-at-Law, has been appointed Chancellor of the Diocese and Commissary of Surrey, in the room of Dr. Haggard, deceased. Mr. Sumner has also been appointed Steward of the Bishopric of Winchester, in the room of Mr. Gill, deceased. Mr. Sumner was called to the Bar by the Hon. Society of the Inner Temple on the 26th of January, 1853.

Mr. Joseph Phillips, Solicitor, has been appointed Town Clerk of Chippenham.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*Barnard v. Hunter.* Nov. 5, 6, 25, 1856.

SOLICITOR—PURCHASE FROM CLIENT—ONUS PROBANDI.

*Upon the purchase by a solicitor from his client, the onus lies on the former to show that he has acted with all due caution in the matter towards the latter, and has put him on his guard, and also that the client has ample means of acting independently of the solicitor; and it is not necessary that there should be any intentional imposition on the client in order to set aside such a purchase.*

THIS was an appeal from the decision of Vice-Chancellor Stuart, ordering to be delivered up to be cancelled two deeds dated respectively in January and June, 1843, executed by a Mr. Lyde, in favour of the defendant, who was an attorney. It appeared that the defendant was considerably indebted to Mr. Lyde, and had assigned to him a mortgage he held on the life estate of Sir Francis Vincent for £1,987. The bill alleged that in 1843 Mr. Lyde was induced by the defendant to put up this mortgage for sale, when it realised £500, but that such sale was to a nominee of the defendant. On accounts being taken between Mr. Lyde and the defendant, it was ascertained that the latter owed £2,500, for which he gave his bond, and mutual releases were executed, and Mr. Lyde admitted to have received the £500 from the money of the mortgage. He died in September, 1843, having appointed the plaintiffs his executors. The life estate of Sir F. Vincent had been sold by order of the court, and the proceeds, £3,000, were in court.

*Wigram and Schomberg* for the plaintiffs; *Bacon and Southgate* for the defendant Hunter; *Craig and Hobhouse* for the other defendants.

The Lord Chancellor said there was no doubt but that the defendant acted as Mr. Lyde's solicitor, and was looked to for protection and advice by him. A solicitor might purchase from his client provided he came within the rule laid down by Lord Eldon, and ever since followed, and under which the onus laid on the solicitor to show that he had acted with all due caution in the matter towards his client, that he had put him on his guard, and that the client had ample means of acting as it were at arm's length from his solicitor. This had not been the case here, and the transaction could not stand, but it was not meant to insinuate that the defendant had been guilty of any intentional imposition on Mr. Lyde, but only that he was mistaken in supposing Mr. Lyde was able to protect himself. As to the mortgages, they stood in the same position as the mortgagor. They were not purchasers for value, but claiming under the defendant, and on his claim failing, their rights, through him, also failed. The appeal would, therefore be dismissed with costs.

## Vice-Chancellor Kindersley.

*Bagley v. Cook,* November 25, 1856.

WILL—CONSTRUCTION—JOINT TENANCY—PER STIRPES.

*A testator by his will appointed his wife and his son*

*William executrix and executor, and gave and bequeathed to them the sum of £1,340 upon trust, to invest in Government or real securities, and to pay the interest thereof to his wife for life, or during widowhood, and after her death or marrying again, to pay the interest to his sons Thomas, Francis, and William, for their natural lives, in equal shares, and from and after their decease, he gave one-third of the principal to the children of each of them in equal shares, to be paid when and as they should respectively attain the age of twenty-one, and he gave the residue to his three sons in three equal shares. Thomas died without issue, and Francis left eleven children, some of whom had died. William was living, and had one child: Held, that he took a life interest in the estate as joint tenant, and that the share of Thomas fell into the residue, and that of Francis and William went to their children per stirpes.*

THE testator, Thomas Begley, by his will, dated in Aug. 1827, after the direction of payment of his debts and personal and testamentary expenses by his wife and his son, William Begley Cook, whom he appointed executrix and executor, gave and bequeathed to them the sum of £1,340 upon trust to invest the same on Government or real securities, and to pay the interest thereof to his wife for her life, or during widowhood, and after her death or marrying again to pay the interest to his sons, Thomas and Francis Begley and William Begley Cook, for their natural lives, in equal shares, and from and after the decease of his said two sons and the said William Begley Cook, then he gave and bequeathed one-third of the said principal sum of £1,340 unto the children of each of them, his said two sons and the said William Begley Cook, in equal shares and proportions, to be paid when and as they should respectively attain the age of twenty-one years; and he gave all the residue of his personal estate to his two sons and Wm. B. Cook, in equal shares and proportions. The testator's son Thomas died in 1838, leaving a widow, but no issue, and Francis died in 1842, leaving eleven children, some of whom were since dead. Wm. Begley Cook was still living, and had one child. A question arose as to the parties entitled.

*Hobhouse* for the children of Francis; *Coleridge* for the residuary legatees; *Baily and Batten* for William Begley Cook; *Bristowe* for his child.

The Vice-Chancellor said that the intention of the testator was that there should be a joint tenancy in the sons, and that the period of the division of the fund would not be until the death of the survivor of the three sons, when their children would take *per stirpes*. The share of Thomas, on his death without children, would fall into the residue; one other third would go to the children of Francis, and the remaining third to Mr. Cook's child.

## Vice-Chancellor Stuart.

*Cast v. Poyser.* November 25, 1856.

CREDITOR'S SUIT—CLAIMANT—CROSS-EXAMINATION ON AFFIDAVIT—FILING EXAMINER'S CERTIFICATE.

*Held, that it is not necessary to file the certificate of*

*the examiner of the refusal of a witness to be examined, and obtain an office copy, for the purpose of obtaining the order for his attendance to be examined or to be committed to the Queen's prison, but such order is drawn up on the production of the examiner's certificate.*

*Held, also, that a claimant who has filed an affidavit in support of his debt under a decree in a creditor's suit is liable to be cross-examined thereon before the examiner, under the 15 & 16 Vict. c. 86. s. 40.*

It appeared in this creditor's suit that a Mr. James Mawby had come in under the decree to prove a debt of £270 odd, and had filed affidavits in support thereof. The plaintiff, on June 17, served him with a subpoena to attend before the examiner on July 7 for the purpose of being cross-examined on his affidavits, when he attended but refused to be sworn on the ground that there had been no order for his cross-examination by the judge. An order was then obtained on July 22 for the attendance of Mr. Mawby within four days of the service of the order to give evidence, or in default that he should be committed to the Queen's prison. The examiner had certified that Mr. Mawby had attended but refused to be sworn, and such certificate had been filed at the Report Office.

*Malins and Regnier Moore* now moved to discharge the order, on the ground that the claimant was not liable to cross-examination, citing the 15 & 16 Vict. c. 86, s. 40, which enacts that "Any party in any cause or matter depending in the said court may, by a writ of *subpœna ad testificandum* or *duces tecum*, require the attendance of any witness before an examiner of the said court, or before an examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court, shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined: provided always, that the court shall always have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case." It was also objected that the examiner's certificate had been improperly filed at the Report Office.

*J. Hinde Palmer* for the plaintiff was not called on.

The *Vice-Chancellor* read, during the argument, the certificate of the Clerks of Records and Writs that it was not the practice to file the examiner's certificate and take an office copy upon which the order was drawn up, but to do so upon the production of the certificate itself, and overruled the objection as to its having been improperly filed at the Report Office. Upon the other objection his *Honour* said that the question was one of very great importance to the practice of the court. It amounted to this, whether or not an affidavit made by a person who went in under a decree to prove a debt before the chief clerk was within s. 40 of the 15 & 16 Vict. c. 86, so as to be subject to cross-examination before the examiner. The affidavits enumerated were not merely such as were to be used in the hearing of a cause, but on "any claim, motion, petition, or other proceeding before the court." It was impossible to doubt that

the affidavit in support of a debt was to be used in a proceeding before the court, and the motion to discharge the order would be dismissed with costs.

### Court of Queen's Bench.

*In re Thomas Cooper, gentleman, one, &c.*  
Nov. 24, 1856.

ATTORNEY—SUSPENSION FROM PRACTICE—DEFACING DOCUMENT IN EVIDENCE.

*An attorney was suspended from practising for six calendar months where, on the trial of an appeal from a conviction under the 17 Geo. 3, c. 41, against a prisoner for having possession of raw silk under circumstances of suspicion that it had been stolen, he had defaced an invoice of sale of silk to the person from whom the prisoner stated he had purchased it, by tearing out the word describing the silk, and the invoice was called for by a witness, although it was not intended to be put into evidence.*

THIS was a rule nisi granted on November 8 last, to strike Mr. Thomas Cooper, of Congleton, Cheshire, off the roll of attorneys of this court. It appeared that on the trial of an appeal from the conviction of one Hill under the 17 Geo. 3, c. 41, at the Cheshire Quarter Sessions, for having a quantity of raw silk in his possession under circumstances of suspicion that it had been stolen, Mr. Cooper attended as his attorney; and that a witness was called in support of the appeal to prove that he had sold some raw silk to one Selman from whom the prisoner alleged he had purchased, and an invoice was called for to refresh his memory, and was produced by Mr. Cooper, in which, however, the word before silk was torn out, so that the quality could not be ascertained. A policeman then proved that he had seen Mr. Cooper tear the piece of paper out, and the pieces were found under his feet, from which it appeared the silk was *tram*, and not *raw*, silk. The magistrates called on Mr. Cooper for an explanation, and it being unsatisfactory, directed this motion to be made.

Sir F. Kelly and *Ment* showed cause on the ground that the invoice was not intended to be used as evidence, but was called for merely to refresh witness's memory, and who was examined, in order to prove the *bond fide* purchase by Selman of some silk.

*Welsby*, in support, left the case with the Court.

The Court said if it had been proved that Cooper made a premeditated use of the document as evidence he would certainly have been punished. But there was reason to believe there was no premeditated design, but that in the hurry of the moment, and seeing the case go against his client, he had resorted to an expedient which was greatly to be condemned, in order to affect the witness's mind. Under all the circumstances, he must be suspended from practising as an attorney of this court for six calendar months.

*Bowman v. Blyth*, November 25, 1856.

CLERK TO MAGISTRATES—TABLE OF FEES—RECOGNIZANCES—PENALTIES.

*The 26 Geo. 2, c. 14, directs the table of fees to be taken by magistrates' clerks, to be approved by the*

*quarter sessions next after it is made and afterwards, with such alterations as they may think fit, to be submitted to, and approved by, the judges of assize: Held, that the sessions could not adjourn the consideration of the table of fees, when presented to a subsequent session.*

*Where the recognizances of a prisoner and his two sureties to appear, and take his trial, are on the same parchment, quere, whether a fee of 8s. or 1s. is payable to the magistrates' clerk?*

THIS was an action against Mr. Anthony Blyth, of Burnham Westgate, Norfolk, as clerk to the magistrates, to recover two penalties of £20 each, for taking fees not authorised by the 26 Geo. 2, c. 14, and the table of fees made thereunder. It appeared that the plaintiff had been taken before the magistrates on a charge of sheep-stealing, and the three recognizances of himself and two others that he would appear to take his trial, were taken on one parchment, for which the defendant charged a fee of 8s. On the trial, the plaintiff obtained a verdict for £40, subject to leave reserved to the defendant to move, and a rule nisi was accordingly obtained on November 5 last. The defendant pleaded that no valid table of fees had been made for the county of Norfolk, and it appeared that the table of fees was made at the Midsummer sessions in the year 1837, but that the Michaelmas sessions did not approve thereof, and adjourned the consideration of the matter until the Epiphany Sessions, 1838. The table was then approved and confirmed at the Spring assizes by the judges.

*Byles, S. L., and Couch* shewed cause against the rule; *O'Malley and Keane* in support.

*Cur. ad. vult.*

The Court said that the question whether the table was approved according to the act of Parliament depended on whether the quarter sessions had a right to adjourn the consideration from the October to the Epiphany sessions. It was clear that the justices in quarter sessions had a general power of adjournment of matters, unless the Legislature required any act to be done at a particular sessions. In that case a limited power would only be given to the quarter sessions, and at that sessions alone could the act be done. It appeared that under the 26 Geo. 2, c. 14, the act of approval was to be exercised at the next sessions after the table of fees was made, and was afterwards, with such alterations as they might think fit, to be submitted to, and approved by, the judges of assize. The table here was not approved according to the act of Parliament at the Epiphany sessions, and was not, therefore, in force, and the defendant was entitled to the verdict. The rule was, therefore, made absolute.

*Jennings v. Dorritt.* Nov. 25, 1856.

COMMON LAW PROCEDURE ACT, 1854—MATTERS OF ACCOUNT—REFERENCE AT NISI PRIUS.

*On the trial of an action a reference to arbitration was directed by the judge under the 17 & 18 Vict. c. 125, s. 3, upon the subject in dispute appearing to be matter of account. It appeared that the defendant had virtually consented thereto. A rule was discharged with costs to set aside the order of reference.*

THIS was a rule nisi granted on November 6 last, to set aside an order made by Pollock, Lord Chief

Baron, referring this cause to arbitration, upon its appearing that the matter in dispute was one of account. The rule had been obtained upon the ground that the defendant never consented to the reference.

By the 17 & 18 Vict. 125, s. 3, it is enacted that "If it be made appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court, or, in country causes, to the judge of any county court, upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred."

*Shee, S. L., and C. G. Addison,* showed cause on the ground that the defendant had virtually consented to the reference; *Hawkins* in support.

The Court discharged the rule with costs.

*Regina v. Mayor of Sunderland.* Nov. 25, 1856.

MUNICIPAL CORPORATIONS ACT—"HOUSE"—ATTORNEY'S OFFICES—BURGESS ROLL.

*Held, that a building, consisting of four rooms, &c., occupied by an attorney as his offices is a "house" within the 5 & 6 W. 4, c. 76 (Municipal Corporations Act), entitling him to be on the burgess roll.*

THIS was a rule nisi obtained on November 6th last for a mandamus on the defendant to insert the name of Mr. Richard Hare, an attorney, on the burgess list. It appeared that in 1855 he built a house containing four rooms, &c., which he occupied as offices, and requested the overseer to describe it in the list as a house, but it was described as offices, whereupon the defendant expunged the name.

*Sir F. Kelly and Garth* showed cause against the rule.

The Court (without calling on *Sir F. Thesiger* and *Stork* in support of the rule) said that the building in question was a "house" within the meaning of the Municipal Corporations Act, 5 & 6 W. 4, c. 76, and made the rule absolute for a peremptory mandamus.

Court of Exchequer.

*Hunter v. Gibbons,* November 24, 1856.

COMMON LAW PROCEDURE ACT, 1854—EQUITABLE REPLICATION OF FRAUD TO PLEA OF STATUTE OF LIMITATIONS.

*A rule was discharged with costs for leave to the plaintiff to reply equitably, under the 17 & 18 Vict. c. 125, s. 15, to a plea of the Statute of Limitations, in an action of trespass to a mine, and which replication was to the effect, that the acts of the defendant had been fraudulently concealed by him from the plaintiff.*

THIS was a rule nisi, granted on November 19 last, for leave to reply equitably to a plea of the Statute of Limitations in this action for trespass to a mine, and which replication was to the effect that the acts of the defendant had been fraudulently concealed by him from the plaintiff. The application had been made to, and refused by, *Martin, B.*, at chambers.

By the 17 & 18 Vict. c. 125, s. 85, it is enacted that "the plaintiff may reply, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds, provided that such replication shall begin the words 'for replication on equitable grounds,' or words to the like effect."

*Keating and Fisher* (of the chancery bar) shewed cause against the rule, which was supported by *Bovill* and *Phipson*.

The Court said that it was doubtful on the authorities,\* whether fraud was an answer to the Statute of Limitations in a court of equity. As the enactment of that statute was binding on a court of law, this court would not interfere, and the rather as the plaintiff had the remedy in his own hands, by going in the first instance to a court of equity. The rule would be discharged with costs.

### Exchequer Chamber.

*Kingsford v. Merry.* November 26, 1856.

COMMON LAW PROCEDURE ACT, 1854—APPEAL FROM REFUSAL OF RULE TO ENTER VERDICT PURSUANT TO LEAVE.

*On an appeal under the 17 & 18 Vict. c. 125, s. 84, against the refusal of the Court below to enter a verdict pursuant to leave reserved at the trial, the practice is pro forma a motion for a rule, but cause is to be shewn in the first instance, when any preliminary objection to the appeal may be taken.*

*The argument in such cases is limited to one counsel only.*

*Where the decision of the Court below is reported the Court of Error should be furnished with the name of the Reports.*

*On the trial the jury were directed to find for the defendant, but leave was reserved to move to enter a verdict for the plaintiff—the Court to be at liberty to draw any inferences from the facts: Held, that the right of appeal existed.*

THIS was an appeal from the decision of the Court of Exchequer refusing to enter a verdict for the plaintiff in this action to recover the value of certain tartaric acid in the defendant's possession, pursuant to leave reserved on the trial by *Pollock, L.C.B.*, and with liberty to draw inferences of fact.

By the 17 & 18 Vict. c. 125, s. 84, it is enacted that "in all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial, if the rule to shew cause be refused or granted and then discharged or made absolute, the party decided against may appeal."

*Sir F. Thesiger* for the defendants; *Hill* for the plaintiff.

The Court said, that by s. 40 it was enacted that, "when the appeal is from the refusal of the Court below to grant a rule to shew cause, and the Court of

Appeal grant such rule, such rule shall be argued and disposed of in the Court of Appeal." The practice would therefore be that *pro forma* there would be a motion for a rule, but cause must always be shown in the first instance, and then any preliminary objection to the appeal might be taken. The argument in such cases was to be limited to one counsel only.

*Coleridge, J.*, said that it would be desirable in cases where the arguments and judgments in the court below were reported, that the judges of this court should be furnished with the names of the books in which the reports could be found.

The Court further said, that although leave was reserved to the Court to enter a verdict, with liberty to draw any inference from the facts, the case was within the act, and a right of appeal existed.

The motion for a rule was then made and granted, and after cause had been shewn the Court took time to consider.

### Crown Cases Reserved.

*Regina v. Mainwaring.* Nov. 22, 1856.

INDICTMENT FOR BIGAMY—PROOF OF MARRIAGE AT DULY LICENSED CHAPEL.

*A marriage was held on a conviction for bigamy to be sufficiently proved by the production of certificates purporting to be copies of the register of marriages in a Wesleyan chapel, and to be obtained from the superintendent registrar, who also signed a statement that the chapel was duly licensed, and which had been compared with the book by a witness, who stated it was correctly extracted.*

THIS was an indictment for bigamy, on which the prisoner was convicted, subject to the opinion of this court, upon the question whether the marriage was sufficiently proved by the production of certificates purporting to be copies of the register of marriages in a Wesleyan chapel, and to be obtained from the superintendent registrar, who also signed a statement that the chapel was duly licensed. This had been compared with the book by a witness, who stated it was correctly extracted.

*G. Browne* for the prisoner; *M. Mahon* in support of the conviction.

The Court said that the fact of the marriage, and the presence of the registrar, had been proved, as also that the chapel was duly licensed. The conviction was, therefore, affirmed.

*Regina v. Spencer and others.* Nov. 22, 1856.

INDICTMENT FOR ARSON—STACK OF "GRAIN"—FLAX.

*A conviction on an indictment for setting fire to a stack of "grain" was affirmed, although such stack consisted of "flax"—the jury finding that flax seed was grain.*

THIS was an indictment for setting fire to a stack of grain, and on the trial before *Bramwell, B.*, it appeared that the stack consisted of flax. The jury found that flax-seed was grain and returned a verdict of guilty, and the point was reserved whether the conviction was right.

The Court affirmed the conviction. No counsel appeared on either side.

\* See *Imperial Gas Company v. London Gas Company*, 23 Law J., N. S., Exch., 303; *Blair v. Bromley*, 3 Hare, 542.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, DECEMBER 6, 1856.

### PROPOSED COMMON LAW IMPROVEMENTS.

It would appear from the comprehensive terms of the Commission of Inquiry into the mode of administering Justice in the Common Law Courts, that very extensive alterations are contemplated, and that at all events the Commissioners will be authorised to receive and consider every kind of suggested improvement. We purpose, therefore, from time to time to submit to our readers such observations as occur to us or are communicated by our contributors or correspondents. We would especially direct attention to such practical alterations as will facilitate the transaction of legal business. We conceive that by a due division of labour the judges might more readily and expeditiously dispose of the various kinds of business now brought before them, whether judicial or ministerial.

The first great question will be whether the three common law courts should not be to a certain extent consolidated, in order that each judge, or a small number of judges, may preside over a separate court, having jurisdiction in a distinct class of cases, without reference to the particular court in which the action or proceeding may have commenced, but all the judges, according to rotation or arrangement, sitting in a court of appeal from the judgments of the several individual courts. A court of appeal should of course consist of several eminent judges, not less than three in number; but inasmuch as on trials at nisi prius and the assizes, and inasmuch as in the courts of equity on the original hearing of causes, a single judge presides (and that in the most difficult and complicated cases), so it may reasonably be contended that a similar course should be adopted on the argument of cases before the courts at Westminster.

It may well be inquired whether it can be necessary—as we see on many occasions—that four of the most eminent judges should sit in their “collective wisdom,” hearing the arguments of counsel, and deciding, after conjoint deliberation, on some question of practice, involving no material or important principle. It may be asked whether it would not be better that, instead of what is absurdly called the “Bail Court,” there should be a perma-

nent *Practice Court*, in which a single judge should preside, assisted by one of the masters, with power to the parties, at the peril of costs, of appealing to three of the judges sitting at stated times on such cases.

We are not in favour of a diminution of the number of judges. When we consider the duties they have to perform, we think they are by no means too numerous. Let us recollect the vast variety of subjects which come before the courts at Westminster for adjudication—the trials in London and Westminster—over which the judges preside; the circuits throughout England and Wales; the trials at the Central Criminal Court; the cases in the Practice Court, and the daily attendance at the Judges' Chambers, with all the new business constantly increasing in the interpretation of acts of Parliament, and enforcing their execution; and we must be satisfied that, in order to have this large amount of judicial business properly done, fifteen judges are not too many.

Then it should be borne in mind, that judges, like other classes of men, become pre-eminently skilful by long practice and experience; we see how rapidly they perceive the points in issue, and how admirably they decide them. Now, if the labours of the court were subdivided amongst the judges, each taking a particular class of cases to hear and determine, it seems evident that the result could not fail to be satisfactory both to the suitors and the profession.

There is no doubt that no small inconvenience now arises from the number of the common law courts sitting at the same time, from the difficulty of procuring the attendance of counsel who practice in all the courts; and it might be objected that if there were as many common law courts sitting on the same days as there are in equity, the present inconvenience would be increased. The leading counsel might, however, select their respective courts, as they do in Chancery, and the difficulty would be at an end. Besides, if it were unavoidable that the same eminent counsel must appear in several courts, it might be arranged that some of the courts should sit on different days. And we see no disadvantage, but the contrary, in providing that the judges should occasionally devote their attention to considering (either at cham-



bers or at home) the judgments they have to deliver. The judges ought not to be overworked, and we would indeed say with Lord Lyndhurst, that they should have an opportunity of returning to the "pleasant pursuits of literature," and we believe that neither their intellectual faculties, nor their legal acumen, would suffer by such occasional change of pursuit and occupation.

It is probable, as was contemplated a few years ago, that a change in the present four terms, and in the holding of the two assizes in the country, might be beneficial. Such changes, however, require much consideration, for the last change in the terms, about twenty-five years ago, has not been productive of the expected advantages. It is supposed that three terms of somewhat longer duration than the present would be preferable, and seeing the demand for the speedy administration of justice, three circuits for the trial of civil as well as criminal cases, would be acceptable to the public, and in some cases render it unnecessary to resort to the county courts; and in this view also it would not be expedient to diminish the number of the judges.

In these new arrangements, we conceive that as, under the Common Law Procedure Act, 1854, power is given to the judges to try causes without a jury, one of the judges might hold a court for the decision of actions for the recovery of debts or damages not less than £10. The supporters of the county courts would, of course, make a great outcry against such an alteration; but if there is any truth in the oft-repeated assertion that the small debts courts are eminently popular, where can be the danger or objection to the grant of a concurrent jurisdiction down to £10 in the superior courts? If the county courts are really preferable—if they are cheaper and more expeditious than the superior courts—they will not suffer by the proposed change.

Amongst other practical improvements, the fifteen masters of the common law courts might have delegated to them some of the ordinary duties now performed by the judges of the superior courts,—such as the granting time to plead, the consideration of the sufficiency of particulars of demand, the administration of oaths, and other matters of routine, which their knowledge of the practice would enable them most satisfactorily to decide. They hold the position occupied in the Court of Chancery by different classes of officers:—taxing masters, registrars, and chief clerks to the judges, who have superseded the masters in Chancery. And as several of the masters are constantly at chambers, their exercising jurisdiction over such practical points as we have suggested, would greatly facilitate and expedite interlocutory proceedings, and relieve the judges of a considerable part of their labour.\*

\* With new duties, the common law masters would be entitled to increased salaries, which are, even at present, disproportioned to the emoluments of similar officers in the equity courts.

We had occasion recently to notice that some of the courts had risen two or three days during the last term before the usual hour of four o'clock, and the blame was attached partly to counsel; but chiefly to the attorneys, and causes were struck out, and announcements made of stringent regulations for the future. With all due respect to the judges, in their anxiety to "save the time of the public," it should not be forgotten, when censuring the practitioners for not being ready to proceed, that unknown difficulties may arise in preparing for a hearing in court. There may be a want of funds, the evidence may be defective, the attorney or his counsel may be ill, or unavoidably detained elsewhere. It may also be submitted to their lordships, that the grievance of the judges being obliged to go home earlier than usual is not so great as that of hurrying the parties into court before they are sufficiently prepared. As already intimated, the labours of the judges are frequently too severe, and an occasional half-holiday by a lack of work ought not much to be lamented, either by the Bench or the Bar.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMON LAW PROCEDURE AMENDMENT ACT (IRELAND).

(19 & 20 Vic. c. 102).

THE following is an analysis of the "Common Law Procedure Amendment Act (Ireland) 1856":—

1. Short title (as above).
2. 16 & 17 Vic. c. 118, incorporated.
3. 18 & 19 Vict. c. 7, and so much of section 103 of 17 & 18 Vict. c. 125, as relates to Ireland, repealed.
4. Court or judge may, by consent of parties, try questions of fact [sect. 1 of 17 & 18 Vict. c. 125].
5. Two judges may sit at the same time for trial of causes pending in the same court [sect. 2]; power to registrars to appoint fit persons to attend the second judge.\*
6. Power to court or judge, upon application, to direct arbitration before trial [sect. 3].
7. Special case may be stated, and question of fact tried [sect. 4].
8. Arbitrator may state special case [sect. 5].
9. Power to judge to direct arbitration at time of trial, when issues of fact left to his decision [sect. 6].
10. Proceedings before and power of such arbitrator [sect. 7].
11. Power to judge to send back matters for reconsideration to arbitrator [sect. 8].
12. Applications to set aside the award [sect. 9].
18. Enforcing of awards within period for setting them aside [sect. 10].

\* The references within brackets apply to the English Common Law Procedure Act, 1854.

4. If action commenced by one party after all agreed to arbitration, court or judge may stay proceedings [sect. 11].

5. On failure of parties to appoint arbitrators, judge may appoint an arbitrator, umpire, or third arbitrator [sect. 12].

6. When reference is to two arbitrators, and one fail to appoint, the other party may appoint arbitrator to act alone [sect. 13].

7. When the reference is to two arbitrators they appoint an umpire [sect. 14].

8. Award to be made in three months, unless court or judge enlarge the time [sect. 15].

9. Rule to deliver possession of land pursuant to judgment to be enforced as a judgment in ejectment [sect. 16].

10. Agreement or submission in writing may be made by court unless a contrary intention appears [sect. 17].

11. As to addresses of counsel to juries on trials of issues [sect. 18].

12. Power to court or judge to adjourn trials [sect. 19].

13. Affirmation instead of oath in certain cases [sect. 20].

14. Persons making a false affirmation to be subject to the same punishment as for perjury [sect. 21].

15. How far a party may discredit his own witness [sect. 22].

16. Proof of contradictory statements of adverse witnesses [sect. 23].

17. Cross-examination as to previous statements in writing [sect. 24].

18. Proof of previous conviction of a witness may be given [sect. 25].

19. Attesting witness need not be called except in certain cases [sect. 26].

20. Comparison of disputed writing [sect. 27].

21. Certified copy of will to be sufficient evidence.

22. Court or judge may, on the application to the court or judge for such purpose, order certain documents to be taken as sufficient evidence of fact, &c.

23. As to costs of proof of will.

24. Provision as to documents produced at trial and not sufficiently stamped [sect. 28].

25. Officer of the court to receive the duty and penalties, and pay them over to the inland revenue collector [sect. 29]; if officer neglect to pay over monies he shall be proceeded against as directed by 13 & 14 Vict. c. 97.

26. No document to require a stamp [sect. 30].

27. No new trial for ruling as to sufficiency of evidence [sect. 31].

28. Error may be brought on a special case [sect. 32].

29. Grounds to be stated in rule nisi for new trial [sect. 33].

30. If rule nisi refused, party may appeal [sect. 34].

31. Appeal upon rule discharged or absolute [sect. 35].

32. Exchequer Chamber and House of Lords to be courts of appeal [sect. 36].

33. Notice of appeal [sect. 37].

34. Bail [sect. 38].

35. Form of appeal [sect. 39].

36. Rule nisi granted on appeal, how disposed of [sect. 40].

37. Court of appeal to give judgment of court below [sect. 41].

38. Powers of court of appeal as to costs and otherwise [sect. 42].

39. Error upon award of trial de novo [sect. 43].

40. Payment of costs upon new trial on matter of fact [sect. 44].

41. Power to court or judge to direct oral examination of witnesses [sect. 45].

42. Proceedings before and upon such examination [sect. 47]; 3 & 4 Vict. c. 105.

43. Examination of person who refuses to make an affidavit [sect. 48].

44. Proceedings upon order for examination as under 3 & 4 Vict. c. 105 [sect. 49].

45. Power to court or judge to order production of documents [sect. 50].

46. Power to deliver written interrogatories to opposite party [sect. 51].

47. Affidavits by party proposing to interrogate, and his attorney [sect. 52].

48. Oral examination of parties, when to be allowed [sect. 53].

49. Proceedings upon such rule or order [sect. 54].

50. Depositions upon such examinations to be returned to master's office [sect. 55].

51. Examiner may make report to the court [sect. 56].

52. Costs of rule and examination to be in the discretion of the court [sect. 57].

53. Judge may order an attachment of debts [sect. 61].

54. Order for attachment to bind debts [sect. 62].

55. Proceedings to levy amount due from garnishee to judgment debtor [sect. 63].

56. Judge may allow judgment creditor to sue garnishee [sect. 64].

57. Discharge of garnishees [sect. 65].

58. Attachment book to be kept by the masters of each court [sect. 66].

59. As to costs of application for attachment, &c. [sect. 67].

60. Action for mandamus to enforce the performance of duties [sect. 68].

61. Declaration in action for mandamus [sect. 69].

62. Proceedings upon claim for mandamus [sect. 70].

63. Judgment and execution [sect. 71].

64. Form of peremptory writ [sect. 72].

65. Effect of writ of mandamus and proceedings to enforce it [sect. 73].

76. The court may order the act required to be done to be done at the expense of the defendant [sect. 74].

77. Prerogative writ of mandamus preserved [sect. 75].

78. Proceedings for prerogative writ of mandamus accelerated [sect. 76].

79. Proceedings on prerogative writ of mandamus [sect. 77].

80. Specific delivery of chattels [sect. 78].

81. Claim of writ of injunction [sect. 79].

82. Form of writ of summons and endorsement thereon [sect. 80].

83. Form of proceedings and of judgment [sect. 81].

84. Writ of injunction may be applied for at any stage of the cause [sect. 82].

85. Equitable defence may be pleaded [sect. 83].

86. Equitable defence after judgment [sect. 84].

87. Equitable replication [sect. 85].

88. Court or judge may strike out equitable plea or replication [sect. 86].

89. Superior courts of common law may in action of ejectment order real title to be tried in such ejectment.

90. Actions on lost instruments [sect. 87].

91. Jurisdiction under 17 & 18 Vict. c. 104 [sect. 88].

92. Penalty on giving false evidence [sect. 89].

93. Power to compel continuance or abandonment of action in case of death of parties [sect. 92].

94. Effect of a judgment in ejectment.

95. Claimant in a second ejectment for the same premises against the same defendant may be ordered to give security for costs [sect. 93].

96. Courts may appoint sittings [sect. 95].

97. Limitation of costs in certain cases.

98. Certain sections of this act to apply to every civil court in Ireland.

99. Master may proceed under sections 98 and 101 of 16 & 17 Vict. c. 118, without order of court; court may direct master to hold inquiries when venue not in Dublin.

100. Provision in case plaintiff in replevin shall delay to file the summons and plaint and proceed to trial.

101. Judgment in replevin for amount of arrears.

102. Master may draw for money lodged as security for costs.

103. Commencement of act.

#### JUDICIAL PROCEDURE (SCOTLAND).

(19 & 20 Vict. c. 91).

1. Effect of arrestments executed as in the hands of persons out of Scotland.
2. Court of session may regulate judicial sales of estates; sales may precede ranking.
3. What proof of insolvency necessary for sales.
4. Decree of sale to be held as a general decree of adjudication.

5. Different creditors may be joined in one adjudication.

6. Mode of rendering an adjudication effectual.

7. Securities for cash accounts or credits.

The following are the title, preamble, and sections of the act:—

An Act to amend and re-enact certain Provisions of an Act of the Fifty-fourth Year of King George the Third, relating to Judicial Procedure and Securities for Debts in Scotland.

[29th July, 1856.]

WHEREAS a bill has been brought into Parliament intitled "A Bill to consolidate and amend the Law of Scotland regarding Insolvency and Bankruptcy," by which it is proposed to repeal the act 54 Geo. 3, c. 87, and it is expedient that certain provisions therein contained relating to judicial procedure and securities for debts in Scotland should be amended and re-enacted: Be it enacted as follows:

1. An Arrestment executed to attach the effects of a debtor, as in the hands of a person out of Scotland, shall not be held to have interpellated such person from paying to the original creditor, unless proof be made that he, or those having authority to act for him, were previously in the knowledge of such arrestment having been so used.

2. The Court of Session shall have full power to make acts of sederunt for abridging the forms of publication and citation, and regulating the proceedings in processes of sale, ranking, and division, whether at the instance of creditors or of apparent heirs; and in every case of a sale under the authority of the Court of Session it shall be lawful for the purchaser, at any term of Whitsunday or Martinmas subsequent to the term of payment of the price, to lodge the price with the interest due upon it, in any joint stock bank of issue in Scotland, at such interest as can be proved for it, by doing which, and by giving notice thereof to the agent who carried on the sale, he shall be discharged of the said price; and further, the Court of Session, upon the application of any of the creditors, shall be empowered to make an order on the purchaser to lodge the price and interest, at any of the said terms subsequent to the term of payment, in one or other of the said banks, sufficient intimation being always previously given, both to the purchaser and to the common agent for the creditors, that such application is made, in order that all parties may have an opportunity to object; and in all cases of judicial sales the lands or other heritable property may be brought to actual sale, so soon as the necessary previous steps are taken, whether the ranking be concluded or not, unless the Court, upon application of any party concerned, shall find sufficient cause to delay the sale.

3. And whereas doubts have arisen upon the construction of an act of the Parliament of Scotland passed in the year 1690, chapter twenty, intituled "Act anent the Sale of Bankrupt's Lands," in so far as it requires that the common debtor be found bankrupt and utterly insolvent: Be it enacted, that a judicial sale at the instance of creditors may in all cases proceed where the interest of the debts and the other annual burdens exceed the yearly income of the property under sale, or where a sequestration shall have taken place, without other proof of bankruptcy or insolvency.

4. When the estate of a debtor is brought into the Court of Session by process of judicial sale and ranking, the decree of sale to be pronounced by the Court

It be held as a general decree of adjudication in favour of every creditor who shall afterwards be intitled in the decree of division; and the effect of a general decree shall be the same in all commissions, or questions of ranking and preference, as it had been pronounced and extracted of the date the first calling of the process of sale before the Lord Ordinary in the Outer House, and no separate adjudication shall be allowed to proceed during the pendency of a judicial sale, and the Court is hereby authorised to settle, by an act or acts of sederunt, in what manner and at what period or periods the principal sums and bygone interest of the debts shall be accumulated, so as to do equal justice to all concerned: provided that it shall be competent to any creditor who is in a situation to adjudge to carry on his action to its conclusion, although deserted or abandoned by the original pursuer.

5. And in order to lessen the number of adjudications for debt, and the expense to all parties, and to illustrate the *pari passu* preference of creditors in similar circumstances, be it enacted, that the Lord Ordinary officiating in the Court of Session, before commencing the first process of adjudication against any estate for payment or security of debt is called, shall obtain intimation thereof to be made in the minute book and on the wall, in order that any other creditors of the common debtor, who, at the next calling of the cause, can show that, although they have not executed their summonses of adjudication, they are in other respects, by the nature of the grounds of debt and steps taken by them, in condition to proceed in adjudging the common debtor's estate, may produce the instructions of their debts, with summonses of adjudication, libelled and signetted, for the purpose of their being conjoined in the decree of adjudication, twenty sederunt days being allowed for such intimation before the cause can be called a second time; and if any of those forms shall happen to be omitted, such adjudication shall be null and void, without prejudice to its being brought forward again in more due form, or still conjoined with any after adjudication; and without prejudice to the validity of order of ranking of posterior adjudications according to the rules of law, when any after process or process of adjudication are brought into court, the same shall be regulated, as to the time and manner of proceeding in them, by an act or acts of sederunt of the Court of Session, so as to provide, as far as circumstances will admit, for the *pari passu* preference of such posterior adjudications with one another, and to abridge the number and expense of such proceedings; and in all cases where penalties for non-payment, over and above performance, are contained in bonds or other obligations for sums of money, and are made the subject of adjudication, or of demand in any other shape, it shall be in the power of the court to modify and restrict such penalties, so as not to exceed the real and necessary expenses incurred in making the debt effectual.

6. And in order to fix more clearly in time coming that diligence is necessary to make an adjudication effectual, be it enacted, that the lodging of a draft charter and note in the office of the presenter of signatures, in terms of the 10 & 11 Vict. c. 51, when the lodging is of the Crown, or the executing a charge of writing against superiors, when the holding is of a subject, and recording a copy of such note and an extract of such draft charter, or such charge, in the register of abbreviations of adjudications, shall be held at all time coming as the proper diligence for the purpose aforesaid.

7. It shall be lawful for any person possessed of lands or other heritable property, and desiring to pledge the same in security of any sums paid, or balances arising or which may arise upon cash accounts or credits, or by way of relief to any persons who may become bound with him for the payment of such sums or balances, although paid or arising posterior to the date of the infestment, to grant heritable securities accordingly upon his lands or other heritable property, containing procuratory of resignation and precept of sasine, for infesting any bank or bankers or other persons who shall agree to give such cash accounts or credits, or for infesting such persons as shall become cautioners for him, or jointly bound with him in such cash accounts or credits: provided always, that the principal and interest which may become due upon such cash accounts or credits shall be limited to a certain definite sum, to be specified in the security, such definite sum not exceeding the amount of the principal sum, and three years' interest thereon at the rate of £5 per centum: provided also, that it shall be lawful for the person to whom any such cash account or credit is granted to operate upon the same by drawing out and paying in such sums from time to time as the parties shall settle between themselves, and that the sasines or infestments taken upon such heritable securities shall be equally valid and effectual as if the whole sums advanced upon such cash account or credit had been paid prior to the date of the sasine or infestment taken thereon, and that any such heritable security shall remain and subsist to the extent of the sum limited, or any lesser sum, until the cash account or credit is finally closed, and the balance paid up and discharged, and the sasine or infestment renounced.

## NOTICES OF NEW BOOKS.

*The Law of Mortgage, as applied to the Redemption, Foreclosure, and Sale in Equity of Incumbered Property; with the Law of the Priority of Incumbrances.* By WILLIAM RICHARD FISHER, Esq., Barrister-at-Law. London: Butterworths.

THE Law of Mortgages is a subject of such very general importance to all classes of practitioners, that we need not be surprised at seeing another author in the field. Already we have excellent Treatises by Mr. Coote and Mr. Coventry, though not of very recent date, besides the well-known works of Lord St. Leonards, Mr. Dart, and others, who treat of this subject along with the other departments of the law of real property.

In order to show somewhat fully the scope of Mr. Fisher's work, we shall extract from his Table of Contents the subjects he treats of in each chapter, and the judicious arrangement he has adopted.

1st. He states the several *kinds of securities*,

"Of the Nature of the Rights of Redemption and Foreclosure—Of the several Kinds of Redeemable Securities—Legal Securities—Securities requiring Registration—Securities upon Ships—Judgments, *lis pendens*, &c.—Equitable Securities."

2nd. He treats of *Redemption*, viz.:

"Of the Nature of the Remedy, and the Form of the Bill—Multifariousness—The Defences—The

Time for Redemption—The Statutes of Limitation—The Persons entitled to Redeem—The Right of the Wife and Surety—Of Joint Tenants, &c.—Of Tenants in Tail for Life, and Remaindermen—Of Guardians and Committees—In Cases of Forfeiture and Escheat—Of the Mortgagor's Assignees—Of Judgment and other Creditors—Of Assignees in Bankruptcy, &c.—Of Devises, Real and Personal Representatives—Of Members of Benefit Building Societies."

3rd. Next he treats of *Foreclosure and Sale*; and herein

"Of the Nature of the Remedy by Foreclosure, and the Form of the Bill—The Right to the Mortgage Debt—The Time for Foreclosure—The Statute of Limitations. OF SALE: Under 15 & 16 Vict. c. 86—Under the original and other Powers of the Court—Of proving the Security at the Hearing."

4th. Then comes the consideration of the proper and necessary *Parties*.

"(1.) Of the Persons interested in the Equity of Redemption—The Mortgagor—His Assignees in Bankruptcy, &c.—His Assignees by Conveyance, &c.—His Devisees and Heir—Her Personal Representatives. (2.) Of the Persons claiming Interests in the Security and Debt—The Mortgage—Assignees and Devisees—Heir—Personal Representative. (3.) Of the Persons beneficially interested in the Equity of Redemption, or in the Security and Debt. (4.) Of Assignees *pendente lite* of the Mortgagor and Mortgagee."

5th. The appointment of a *Receiver* is next considered.

"As to the Appointment—The Nature thereof—For and Against whom—Of what Property—At what Stage of the Cause—Who may be Appointed—The Receiver's Authority—His Right to Apply to the Court—His Possession—His Expenditure—His Allowances—The Rights of Consignees—Of Passing the Receiver's Accounts—Payment of Balances, and Liability to Interest—Discharge of the Receiver."

6th. Next the subject of *Notice* is examined.

"Nature of—To whom it should be given—Plea of Purchase without Notice—Of Constructive Notice—By Negligence and Fraud—Between Principal and Agent—By Recital or Reference—By Tenancy—In Dealings with Executors, Administrators, and Trustees—By Records—Acts of Parliament—Court Rolls—Registration of Deeds, *Lis pendens*, Judgments, and Decrees."

7th. From this, the author proceeds to *Priority*, under the following heads:—

"PART I. Of Legal Priority, and herein of Defective Assurances and the Doctrine of Tacking. PART II. Of Equitable Priority, and herein of the Right to Hold several Securities and of Marshalling Securities. PART III. Of Priority in Securities upon Chattels Personal and Choses in Action, and upon Ships under the Maritime Law. PART IV. Of Priority by Statute, and herein of the Registration, Shipping, Judgment, and Bankrupt and Insolvent Acts. PART V. Of the Loss of Priority by Waiver, Merger, Neglect, and Fraud."

8th. *Accounts* generally against the mortgagor and mortgagee, are thus noticed:—

"Who Bound by Accounts—Of Accounts against

the Mortgagor—Against the Mortgagee and his Assignees—Against the Mortgagee in Possession—The Manner of Charging the Mortgagee in Possession—Accounts against Mortgagee in Possession of Mines—Of Allowances to the Mortgagee—Of taking the Account of Rents—Of carrying on the Accounts. PART II. Of Accounts of Interest—Who bound to Pay and entitled to Receive—Of Interest on Arrear of Annuities, and on Bond and Judgment Debts—Of the Conversion of Interest in Arrear into Principal—Of computing subsequent Interest—The Right to set off Arrears of Interest—The Statutes of Limitation—The Rate of Interest reserved, and Usury—Of staying Interest by Tender. PART III. Of Accounts of Costs—Of the general Right of the Mortgagee to Costs—The Mortgagee's Right to Costs, and Expenses disbursed—His Liability in respect of the Loss of Deeds—Of the Costs of Reconveyance—The Costs of unnecessary Parties—The Costs under a Decree for Sale—The Costs of Disclaiming Parties—Of Equitable Mortgagees—Of adding Costs to the Debt after Decree—Of Solicitor's Costs—Of Costs on staying Proceedings."

9th. Of the *Decree* and matters arising thereout, the author thus treats:—

"Of the Nature and Form of the Decree—The Time allowed for Payment—Of Tender—Of enlarging the Time to redeem, and opening the Foreclosure—Of the Conveyance and Delivery of the Estate, on Redemption, Foreclosure, or Sale—The Right to Policies of Insurance, effected as Collateral Securities—Of the Decree for Sale—Of the Decree against Infants and Lunatics—Against Married Women—Of the Delivery, Custody, and Production of the Title Deeds—The Loss of the Title Deeds—Of the Order absolute for Foreclosure—The Dismissal of the Bill for Redemption—Staying Proceedings."

It is scarcely necessary to observe in regard to the competition which prevails amongst legal as amongst literary authors, that such competition is for the most part unavoidable. Even supposing that the first author has, at the time of publishing his work, exhausted the subject, by including within it every statute and decision bearing on the points under consideration, new statutes are passed, and new decisions made, so that if the original author does not bring out a new edition, another author, after a reasonable interval, may be entitled to compile a new work, and put up the law to the latest period.

Again, although the original author may continue to publish new editions of his work as rapidly as requisite, still another author may be justified in writing a new treatise on the same subject, taking a different view of the effect of the legislative provisions and judicial decisions—adopting a new arrangement of the materials, and altogether compiling a *bonâ fide* new work, resorting to the original authorities, and drawing, by his own labour (to use a phrase of Lord Eldon), from the primary wells of law, and not using other people's buckets. We know not that anyone can reasonably complain of such learned labour, except that it is somewhat unkind, and displays a want of originality of thought, to follow in the footsteps of a predecessor. The

reproach, however, will of course depend on the amount of the defects of the original work, and the importance of the new matter incorporated into the rival publication.

The contents of Mr. Fisher's volume, which we have set forth, will enable our readers to consider, not only the plan adopted in its composition, but to ascertain the various additions which are comprised in the treatise, when compared with former expositors of this branch of the law. Already we hear that Mr. Fisher's volume is favourably spoken of by competent judges.

## LAW OF COSTS.

### OF STRIKING OUT OR AMENDING PLEAS.

AFTER the pleas had been delivered in an action, the plaintiff obtained a rule *nisi*, under the 17 & 18 Vict. c. 125, s. 52, to strike out or amend the first plea, "the same being framed so as to prejudice, embarrass, and delay the fair trial of the cause," or to strike out the first or second plea, "as founded on the same subject matter."

Upon the argument, on shewing cause against the rule, the court suggested the mode in which the plea ought to have been framed; and a rule was made absolute, whereby the first plea was ordered to be amended in a particular way, and the residue of the rule was discharged. No mention was, however, made of costs.

The proceedings were afterwards ordered to be stayed upon payment of the debt, and costs to be taxed, and on the taxation the master refused to allow the plaintiff the costs of the rule *nisi* and absolute, and of the proceedings in relation to the amendment of the pleas.

A rule was then obtained to review the taxation. Alderson, B., said: "If a rule is made absolute in its terms, the party obtaining it gets the costs as costs in the cause. If it is varied, the costs do not follow as of course; but if the party obtaining it wishes any special terms, he should ask to have them inserted in the rule. The plaintiff should have asked for these costs."

Martin, B., added: "Neither of the things which the plaintiff asked for was granted, but something different. It would be very inconvenient if the rule was not as stated by my brother Alderson. It would lead to constant discussions before the master as to the costs of rules. As the not giving the costs was evidently an omission, this rule will be discharged without costs."

*Barnes v. Hayward*, 1 Hurl. and N. 242.

## NOTES ON THE COMMON LAW PROCEDURE ACT, 1854.

### POWER OF JUDGE AT NISI PRIUS TO AMEND RECORD.

In an action against William Goslett, William Holgate, Henry Johns, Samuel Kingchurch, John Peters, Thomas Willingale, and Samuel Weatherley, the defendant Johns suffered judgment by default, and the evidence failed as against Willingale and Weatherley.

Held, that it was competent to the judge at *nisi prius* to amend the record under the 17 & 18 Vict.

c. 125, s. 87, by striking out the names of Willingale and Weatherley.

*Johnson v. Goslett and Others*, 18 Com. B. 729.

### LIBERTY TO PLEAD EQUITABLE DEFENCE—TRIAL BY THE COURT.

IN an action on a covenant in a deed that the defendant should not practise as a surgeon in the parish of Swallowfield or Shinfield, Berkshire, the court allowed an equitable plea, under the 17 & 18 Vict. c. 125, s. 83, that as between the defendant and the plaintiff the part of Shinfield in which the defendant practised had always been treated as being in Stratfield Mortimer, and that it was not intended by the parties to restrain the defendant from practising in the part of Shinfield in question, and that the covenant, as set out in the declaration, was so framed by mistake.

The court also, upon the motion for a rule *nisi* for the allowance of such plea, directed that an option should be given to the plaintiff of having the issue tried by the court.

*Luce v. Izod*, 1 Hurlstone and N. 245.

## LAW OF ATTORNEYS AND SOLICITORS.

### RIGHT TO RECOVER COSTS OF ABORTIVE ACTION—CRASSA NEGLIGENTIA.

IT appeared that the plaintiff, who was an attorney, received, in November, 1854, from the defendants, foreign agents residing in London, instructions to commence an action for them upon five foreign bills of exchange for 5,000 francs each, drawn on Messrs. Collingridge and Co., of Paris, and which they alleged to be unpaid and duly protested in their hands. The defendants also sent with the letter of instructions a copy of one of the bills, stating that they were all indorsed to Messrs. Cusin, Legendie, and Co.

The plaintiff never saw the bills themselves, but, acting on the above instructions, and concluding from the statement that the bills were *unpaid and duly protested in their hands*, and that the defendants had authority to sue thereon as *indorsees*, commenced an action in their names against Messrs. Collingridge and Co., one of the firm of which (Mr. Simpson) was at the time in London. The action proceeded as far as plea, when the defendants' attorney obtained an order for the inspection of the bills, and thereupon the plaintiff obtained the same from the present defendants, and discovered that there was no special indorsement to them, as was required by the law of France (*Code de Commerce*, Liv. 1, Tit. VIII., s. VI., art. 136—8), to entitle them to sue thereon. Upon further inquiry he ascertained that the bills had been merely transmitted to the defendants by Messrs. Cusin and Co., of Paris, for whom they acted as agents. The plaintiff thereupon discontinued the action, and the defendants' costs were paid, and he commenced another action against the same parties in the names of Messrs. Cusin and Co. When the cause was ready for trial the plaintiff required the defendants either to furnish him with funds to carry it on or to give him an undertaking to pay his charges. They then wrote him a letter, that as he so strongly advised them to go on with the action, and seemed so sanguine as to the result, they thereby authorised him to proceed to trial, and that they would hold themselves responsible on Mons. Cusin's behalf for all

costs and expenses, it being distinctly understood that he was perfectly prepared to go on without delay, and that he would take all the necessary measures for avoiding any delay or irregularity.

The cause then went to trial, and the plaintiffs obtained a verdict for £1,050 and interest, but it did not appear that the amount had been realised. The plaintiff then brought this action against the defendants to recover the costs of these proceedings, to which they pleaded never indebted and payment. A verdict was found for the plaintiff for £107 odd, with leave to the defendants to move to reduce it by the sum of £22 odd, the expenses of the abortive account less £10 which the defendants had paid on account of such costs.

In making absolute the rule which had been accordingly obtained, *Jervis, C. J.*, said:—"The plaintiff, when he commenced proceedings upon the bills in the names of Orsi and Armani, knew, or had the means of knowing, what the law of France required. It was his duty to see the bills before he took any steps. He would then have known that the action could only be brought in the names of Cusin, Legendre, and Co., and so the expense of the abortive action he first brought would have been avoided."

*Willes, J.*, said:—"Without deciding that an attorney practising here is bound to know the French law, I agree with the rest of the court in thinking that there was such a degree of negligence on the part of the plaintiff as to disentitle him to recover the costs of the action brought by him against Simpson in the names of the present defendants."

*Cresswell and Williams, JJ.*, concurred.

*Long v. Orsi and Another*, 18 Com. B. 610.

## RAILWAYS, PROFESSIONAL CHARGES, AND CORT'S INVENTION.

It was recently stated by Mr. Stephenson, M.P., the President of the Institution of Civil Engineers, in his opening address, that no less than fourteen millions sterling had been paid to the parliamentary, legal, and engineering professions for their charges alone in obtaining 45 acts of Parliament for establishing railways, besides the subsequent annual costs of solicitors and engineers in the progress of these vast undertakings. We are unable to apportion the amount respectively received by the solicitors, the parliamentary agents, and the engineers, but cannot be far wrong in supposing that five millions at least have been paid to the legal practitioners. We have heard of one bill of costs of £250,000 on a railway of seventy miles; but this included enormous fees to counsel, the expense of innumerable purchases, investigations of titles, many special contracts, and the parties dealt with as occupiers, leaseholders, or freeholders being many thousands.\*

We have been induced to notice the magnitude of these railway costs on account of an appeal made to the nation, as well as to Parliament, in support of the claim of the descendants of *Henry Cort* to compensation for his invaluable inventions in the manufacture of iron—a claim which has been most powerfully supported by many of the public journals. We have an additional motive in submitting the case to our readers, inasmuch as one of the sons of *Henry Cort*

was a highly respectable and intelligent solicitor,† who practised many years in Gray's-inn and the Temple.

From the columns of the *Times* we abridge a statement of Mr. Cort's invention, in the eloquent conclusion of which we heartily concur. The counsel and solicitors who have so largely participated in the benefits resulting from these ingenious discoveries may fairly be expected to take into consideration the claim now submitted to the public.

"Time was some seventy years ago that England was dependent upon Sweden and Russia for her supply of wrought iron. *Henry Cort*, of Gosport, an iron manufacturer, invented, and secured by patent, two processes, which relieved us from this commercial servitude, and liberated for the use of the English manufacturer the supplies of iron which are stored up so profusely under the surface of these islands. The first process effected the cheap manufacture of wrought iron by the flame of pit coal in the puddling furnace; the second process, which was the rolling of this cheap wrought iron through grooved rollers enabled the manufacturer to produce twenty tons of bar iron in the same time and with the same labour previously required to manipulate one ton of inferior quality by the tedious process of forging under the hammer. Before the year 1783, when iron was, comparatively speaking, but slightly used for commercial, maritime, or social purposes, we paid annually to Russia and Sweden £1,500,000 for wrought iron. Then came the war, foreign prohibitions, and an overpowering and increasing demand for more and more iron. The inventions of *Henry Cort* carried us easily through this period of trial, and as his descendants allege, were the principal cause of our success. It would, indeed, be impossible to exaggerate the advantages resulting from an unlimited supply of this precious metal. . . . Let any one think of our iron fleet, iron gunboats, iron mercantile marine, iron railways, iron engines, iron cotton mills, iron suspension and tubular bridges, iron batteries, iron palaces, &c., and then ask himself what should be the measure of public gratitude to the descendants of a man who endowed his country with such an amount of wealth and power. While others have, upon the strength of *Henry Cort's* discoveries, been raised to the position of millionaires, his children are almost starving. We should be ashamed for the honour of England to mention the amount of pension which has been conceded to them by the Crown and Parliament. It is about equal in amount to the wages of a domestic servant of the humblest description, and even this has been made subject to deductions. For the sake of our national credit, it behoves all persons of influence in the country to give the case of *Henry Cort's* children their immediate consideration. In bringing the subject under their notice our duty is discharged."

## COMMON LAW PROCEDURE ACTS.

### GREAT YARMOUTH BOROUGH COURT.

Her Majesty, by and with the advice of her Privy Council, is pleased to order that within one month after such order shall have been published in the *London Gazette*, the provisions of the "Common Law Procedure Act, 1852," and the rules

\* It may be supposed that this vast sum of five millions has made up to the profession the loss sustained by the numerous law reforms, but these millions have been divided amongst a small number of the general body.

† Amongst other testimonials laid before the Government in the son's lifetime was one from Sir Anthony Hart, the Irish Lord Chancellor.

made and to be made in pursuance thereof, except sections 97, 98, and 120 of the said act, and except rules 57, 81 to 111, both inclusive, 115 to 117, both inclusive, 123 to 134, both inclusive, 173 and 175; and also except such parts of the said act as relate to special juries, terms, and pleadings, between the 10th day of August and the 24th day of October in any year, shall apply to the court of record of the borough of Great Yarmouth, called the borough court.

And that, within one month after such order shall have been published in the *London Gazette*, the provisions of the "Common Law Procedure Act, 1854" (except such as are contained in the sections of the said act, numbered respectively 2, 17, 75, 76, 77, 95, 97, 98, and the whole of the 99th section, except so much thereof as explains the meaning of the word "action," and also except such as are contained in sections 100, 101, 102, 104, 105, and 107, in the copy of the said act, printed by her Majesty's printer), and the rules made and to be made in pursuance of the said act shall extend and apply to the said court of record of the borough of Great Yarmouth, called the borough court.

And that the judge of the said borough court

shall be the person by whom any powers or duties, incident to the provisions hereby applied under the said two acts, shall be exercised in respect to matters in the said court.—From the *London Gazette* of 2nd December.

## SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855.

### GREAT YARMOUTH BOROUGH COURT.

Her Majesty, by and with the advice of her Privy Council, is pleased to order, that within one month after such order shall have been made and published in the *London Gazette*, all the provisions of the "Summary Procedure on Bills of Exchange Act, 1855," shall extend and apply to the court of record in the borough of Great Yarmouth, so far as the same may be applicable to the said court.

And that the judge of the said borough court shall be the person by whom any powers or duties, incident to the provisions hereby applied under the above recited act, shall be exercised in respect to matters in the said court.—From the *London Gazette* of 2nd December.

## CANDIDATES WHO PASSED THE EXAMINATION.

*Michaelmas Term, 1856.*

### Names of Candidates.

### To whom articulated, assigned, &c.

Anderson, Alexander Burnes	...	...	James Birkett.
Baker, Thomas, the younger	...	...	Thomas Baker.
Bartleet, Charles	...	...	Arthur Ryland.
Beale, Alexander	...	...	Charles Easton; John Galsworthy.
Beaumont, Joseph	...	...	Edward Wilson Banks.
Bird, Edward Wrangham	...	...	Henry Cairncross Duncan.
Boodle, Henry Trelawny	...	...	John Christopher Lethbridge.
Bossfield, James, the younger	...	...	Robert Moser; Robert Marshall.
Bray, Cecil	...	...	Samuel Rowles Pattison.
Briggs, Hickson	...	...	Henry Farnell.
Brockman, Henry Julius	...	...	Ralph Thomas Brockman.
Brooke, Charles Stuart	...	...	Thomas Philip Lowe.
Bruce, Gainsford	...	...	John Fenwick.
Dixon, Robert	...	...	John Thrupp.
Douglass, Jas. Heger	...	...	James Ley Douglass; John Torkington.
Dyson, George	...	...	Frederick Robert Jones, junior.
Eastwood, William Manley	...	...	Abraham Greenwood Eastwood.
Ellerton, John	...	...	William Pringle; Robert Shum.
Eyles, Edward Wells	...	...	John Drummond; Nathaniel Charles Milne.
Farmer, Samuel	...	...	William Humfrys.
Graham, Charles Arthur	...	...	Robert Fuller Graham.
Green, John Matthias, B.A.	...	...	Thomas Martineau.
Hargrave, John Taylor	...	...	Anthony Buck.
Harris, Samuel	...	...	William Wartnaby.
Harris, William Henry	...	...	William Henry Reeca.
Heathcote, Godfrey	...	...	Charles Sherrard Burnaby.
Heelis, Edward	...	...	William Watson.
Hind, William Everatt	...	...	Thomas Harley Carnochan.
Holberton, George Robert Otley	...	...	Charles Edward Jemmett.
Horden, Alexander Radcliffe	...	...	Henry Coare Kingsford.
Inglelew, James Henry	...	...	Henry Inglelew.
Jackson, William Maxwell	...	...	James Allen Jackson; Edward Willan.
Jenkins, James	...	...	Richard David Jenkins.
Jessop, Alfred	...	...	Thomas Robinson.
Johnston, John Watkins	...	...	William Watkins.
Jones, Edward	...	...	Abraham Howell.
Keene, Thomas	...	...	Charles James Abbott.
King, Charles Bayley	...	...	Thomas Slaney.
*Langley, Albert Gordon	...	...	Charles Langley; William Henry Langley.

\* This Candidate obtained the Prize at the Michaelmas Term Examination.



Leakey, Peter Nettleton	...	...	...	James Shirley Leakey.
Leggett, Francis Charles	...	...	...	John Edward Buller.
Linton, Robert	...	...	...	Thomas Saunders Parnell.
Litchfield, Robert William	...	...	...	Robert Slaney.
Lucas, Robert	...	...	...	Robert Lucas; George Robins.
Lumley, Thomas	...	...	...	James Coates.
McClellan, John	...	...	...	George Philcox Hill.
Maltby, William Cole	...	...	...	George William Prescott.
Marsden, John Benjamin	...	...	...	Henry Peale Bird; Nathaniel Bridges.
Massey, Thomas, the younger	...	...	...	Edward Browne Hooke.
Meredith, James Austen	...	...	...	Robert Bishop; Albert Smith.
Miller, James Russell	...	...	...	James Miller.
Moore, Joseph Chaffey	...	...	...	Thomas Moore.
Nelson, Charles Thomas	...	...	...	Horatio Southall.
Norton, Edmund Palmer	...	...	...	Edmund Norton.
Owen, Owen, the younger	...	...	...	Owen Owen, the elder; Joseph Dodds.
Partington, Charles James	...	...	...	Thomas Henry Ewbank.
Pearce, Richard Seward	...	...	...	Charles Ewens Deacon; Charles John Tylee.
Peniston, Lewis Frederick	...	...	...	John Lambert.
Perkins, William Tindal	...	...	...	John Taylor; Charles Evans.
Pettit, Henry	...	...	...	William Dewes.
Phipos, Thomas James	...	...	...	James Johnston.
Pierson, Thomas	...	...	...	Samuel Younge.
Pigeon, Richard Walter	...	...	...	Walter Pigeon; George Jeremiah Mayhew.
Popkin, Evan Prichard	...	...	...	Thomas Popkin; Charles James Abbott.
Pridham, Henry	...	...	...	George Pridham.
Rackham, Thomas Hanworth	...	...	...	Henry Cooke.
Radcliffe, Robert Carr	...	...	...	Thomas Radcliffe.
Rayner, Robert Lee	...	...	...	Joseph Rayner.
Reddish, Henry	...	...	...	Edward Reddish.
Riley, Samuel William	...	...	...	William Butt; John Johnson.
Rogers, Griffith Jones	...	...	...	Richard Jones Croxon; Charles Wilkin.
Roscoe, Henry	...	...	...	Edward Wilkins Field.
Royle, William	...	...	...	William Royle, the elder; Henry Page.
Scott, Henry	...	...	...	Edward Burges.
Serjeantson, Nicholas Edmund	...	...	...	Joseph Rider.
Seymour, Arthur	...	...	...	John Brewster; Thomas Dewes.
Shuttleworth, Thomas Moss	...	...	...	Thomas Starkie Shuttleworth; Henry Lloyd.
Smith, George	...	...	...	George Goodwin Brittlebank; Thomas Richardson.
Smith, George Alderson	...	...	...	William Ward; William Sykes Ward.
Smith, John Austin	...	...	...	Charles Smith.
Snell, Frederick William	...	...	...	James Eldridge; William Lechmere Whitmore.
Solomon, John Isaac	...	...	...	Thomas Hills.
Stirk, James William	...	...	...	Thomas Pinchard.
Stott, Richard	...	...	...	John and William Crick; Frederick Thomas Vele.
Stubbs, Richard	...	...	...	Sir John Kerle Haberfield.
Stuchbury, George Markwick	...	...	...	Charles Pearson.
Taylor, George	...	...	...	John James Gutch.
Taylor, Joseph Smith	...	...	...	Thomas Plews.
Tucker, William Henry	...	...	...	Charles Benjamin Tucker; Francis James Ridsdale.
Walker, Edmund William	...	...	...	Micajah Hilditch Walker.
Walker, Edward	...	...	...	Francis Soames; Samuel Gale.
Waring, John Hugh	...	...	...	John Francis Bellwood Fay; John Parry Jones;
				Thomas Carington Campbell.
Watts, Sidney	...	...	...	Henry Marsh Watts.
Welsford, George Boulter	...	...	...	George Andrews.
Whatley, Joseph Higgins	...	...	...	Charles Morton Ricketts Chamberlain.
Whitaker, Philip Francis	...	...	...	Edward Thomas Whitaker; Edwin Eugene Whitaker.
Williams, John	...	...	...	Robert Worthington.
Wilson, Charles Macro	...	...	...	James Wilson.
Wilson, Lister	...	...	...	Anthony Portington.
Wintle, Charles	...	...	...	Thomas Abby Fellowes.

## NOTES OF THE WEEK.

## MEETING OF PARLIAMENT APPOINTED.

It was this day (Nov. 28) ordered by her Majesty in Council that the Parliament which stands prorogued to Tuesday, the 16th day of December, 1856,

be further prorogued until *Tuesday*, the 3rd day of *February*, 1857, then to meet "for the despatch of public business."

## CHIEF JUSTICE OF THE COMMON PLEAS

At a Privy Council held on Friday, 28th Nov. Sir Alexander James Edmund Cockburn, the Lord

Chief Justice of the Court of Common Pleas, was, by her Majesty's command, sworn of her Majesty's Most Honourable Privy Council.

## LAW APPOINTMENTS.

Mr. John Bruce, solicitor, has been appointed town clerk of Pwllheli, in the room of Mr. David Williams, resigned.

G. A. Arney, Esq., has been appointed recorder of Winchester, in the room of J. S. Stock, Esq. Mr. Arney was called to the bar by the Honourable Society of Lincoln's-inn on the 5th of May, 1837, and went the Western Circuit.

## THE COMMON SERJEANT.

In addition to the names already announced as candidates for the office of Common Serjeant, in the room of Mr. Russell Gurney, whom, it is expected, will be appointed Recorder, are, Mr. Bodkin, Mr. Prendergast, Q.C.; Mr. Thomas Chambers, M.P.;

Mr. Keating, M.P.; Mr. Atherton, M.P.; Mr. Serjeant Channell, and Mr. Serjeant Thomas. The appointment of the Recorder is vested in the Court of Aldermen, that of Common Serjeant in the Common Council.

## MR. BARON WATSON.

The Queen was this day (Nov. 28) pleased to confer the honour of knighthood upon William Henry Watson, Esq., one of the Barons of her Majesty's Court of Exchequer.—From the *London Gazette* of 2nd December.

## NEW SOUTH WALES COMMISSIONER.

The Supreme Court of New South Wales has appointed Samuel Heath, of No. 1, Church-court, Clements-lane, in the city of London, solicitor, a commissioner of that court, for taking affidavits and examining witnesses, at law or in equity, in the city of London, or elsewhere in equity.—From the *London Gazette* of 2nd December.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Master of the Rolls.

*University of London v. Yarrow.* Nov. 12, 1856.

CHARITABLE BEQUEST—VALIDITY OF—BILL TO ESTABLISH.

*A testator bequeathed to the University of London a sum of stock and his residuary personal estate for the founding, establishing, and upholding an institution for studying and, without charge beyond immediate expenses, endeavouring to cure maladies, &c., of any quadrupeds or birds useful to man, and he directed the interest to accumulate for fifteen years after his death, and then to be applied for the above purpose; and also to appoint a professor, with a salary and residence, whose lectures should be gratis: Held, that the gift was a valid charitable one.*

A TESTATOR by his will bequeathed to the Chancellor, Vice-Chancellor, and Fellows of the University of London a sum of £20,000, 8 per Cent. Consolidated Annuities, and all the residue of his personal property not consisting of lands, houses or other real estate, for the founding, establishing and upholding an institution for studying, and, without charge beyond immediate expenses, endeavouring to cure maladies, &c., of any quadrupeds or birds useful to man, such animal sanatory institution to be established within one mile of Westminster, Southwark, or Dublin, as decided by the Chancellor, &c., at the time for making such decision. And he directed the interest on such residue and the stock, to accumulate for 15 years from his death, and then to be applied for founding such animal sanatory institution. The testator also directed the appointment of a professor or superintendent of the institution, who should have a residence adjacent thereto besides a salary, and whose lectures should be free. There was a gift over to the provost, fellows, and scholars of the University of Dublin to found certain professorships in the event of the Chancellor &c., of the University of London declining to accept the trusts. The latter had, however, determined to accept, and this bill was filed to establish the charity.

*R. Palmer and Amplett for the plaintiffs; Cairns and Pearson for the University of Dublin; Lloyd and Baggallay for the executors; Cotton for the next-of-kin.*

The Master of the Rolls said that the bequest was a valid charitable one, and made a decree accordingly.

## Vice-Chancellor Kindersley.

*Potter v. Croxley.* Nov. 19, 1856.

SPECIFIC PERFORMANCE OF CONTRACT—INQUIRIES AS TO WHEN TITLE FIRST SHOWN.

*Where a decree is made for the specific performance of a contract, an inquiry as to when the title was first shown is not usually directed where the contest is merely as to the right to a specific performance, and it is not a contest on the question of title only.*

IN this bill for the specific performance of a contract entered into by the plaintiffs, who were carpet manufacturers at the Darwen Works, in Yorkshire, to sell certain patent rights for improvements in the manufacture of carpets, it appeared that the plaintiffs had ceased to carry on business, but that the defendants refused to complete on the grounds of vagueness of description; that the representations on the faith of which the agreement was entered into were fallacious, and that the plaintiffs were not entitled as represented, and, also, that there had been great delay.

*Glass and Speed for the plaintiffs; Solicitor-General and Crackmall for the defendants.*

The Vice-Chancellor said, that under the agreement, each party acknowledged each other's patent rights up to its date, and it was also a term that the plaintiffs should satisfy the defendants of such validity. The defence that the agreement had been obtained by false representations was not presented by the answers, but only in an affidavit recently filed, that one of the plaintiffs' looms had failed to perform its work. It, however, appeared that the loom had done full work up to that time, and the

defendants, besides, had not superintended its working as the plaintiffs had. As to the question of delay, the plaintiffs' solicitor had urged on the completion of the purchase, and the plaintiffs were, therefore, entitled to a specific performance. The only question was, whether the defendants were entitled to an inquiry when the title was first shewn. It was not usual to insert a direction to this effect where the contest was the right to a specific performance, and it was not a contest on the question of title only.

### Vice-Chancellor Wood.

*In re Boycott's Trust.* Nov. 8, 1856.

TRUSTEES' ACT, 1850 — ADDITIONAL TRUSTEES  
BEYOND NUMBER IN ORIGINAL DEED.

*An order was made under the 13 & 14 Vict. c. 60, s. 82, for the appointment of two additional trustees, although there were only two in the original deed, where the trust property had considerably augmented, and the parties beneficially interested desired such appointment.*

G. Lake Russell appeared in support of this petition, praying the appointment of two additional trustees, although only two had been appointed by the deed of settlement, on the ground that the trust funds had considerably augmented, and that the parties beneficially interested were desirous of such appointment.

By the 13 & 14 Vict. c. 60, s. 82, it is enacted that, "whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees."

The Vice-Chancellor made the order as prayed.

### Court of Queen's Bench.

*Sprye v. Porter.* Nov. 18, 25, 1856.

AGREEMENT — MAINTENANCE — CHAMPERTY —  
PLEA OF INSOLVENCY.

*Where by an agreement the plaintiff and another person agreed to furnish documents in order to establish the defendant's claim to certain property and to supply evidence in support thereof, and if he succeeded in consequence that they should each have one-fifth of the property recovered, and it appeared that proceedings were pending in which the defendant was a claimant: Held, that the agreement was illegal.*

*Held, also, upon the plaintiff's insolvency, his right of action, if any, passed to his assignees.*

THE declaration in this action alleged that the plaintiff and one Rosaz were possessed of certain documents and information in their possession, and that the defendant was entitled to certain property in the hands of the Crown, of which he was not aware, and it was proposed that the plaintiff should give up the same to the defendant, and that he and Rosaz should receive one-fifth each of the property in case he should, by means of the same, come into possession of the same. An agreement to

this effect was signed, which also contained a provision that the defendant should not be compelled to take any proceedings at law or in equity, that the defendant should not make the documents known without the plaintiff's consent, and that if he did not think proper to take steps for the recovery of the property, he would return them to the plaintiff, and the deed should be cancelled. The defendant pleaded several pleas, setting out the agreement to supply evidence, and also that the work and labour done were in pursuance of an illegal agreement, and that proceedings were pending in court in which the defendant was claimant, and that the parties agreed to maintain the defendant therein. There was also a plea of the plaintiff's insolvency, and that his right of action, if any, passed to his assignees. The case now came upon open demurrer to the pleas.

*Borill and Lusk* in support; *Temple, M. Chambers, H. Hill, and Miskard* contra.

*Cur. ad. vok.*

The Court said there was nothing on the face of the declaration to shew that the agreement was tainted with maintenance and champerty. No authority had been cited to shew that this agreement was illegal. No suit was pending, and the agreement contained no stipulation for commencing any. The plaintiff had the documents, which, it must be assumed, were genuine, and which made out a conclusive title, and the property could be recovered without litigation. There was no agreement to furnish money or evidence, or in any way to maintain the defendant, and it was not vitiated by maintenance or champerty, or as being contrary to public policy. There was, however, the plea setting out the agreement to give such information and evidence as should become necessary, and that if, by means thereof, the defendant should recover the property, the defendant agreed to pay both of the parties one-fifth of the property. This shewed that, although they were not to employ an attorney, nor to advance money, they were to supply that on which the event of the suit must depend, viz., evidence. Such an agreement was calculated to lead to perjury and the perversion of justice, and came within the principle of *Stanley v. Jones*, 7 Bing. 369; and the plea setting out that certain proceedings were pending in court, made the case stronger. On the other plea of the plaintiff's insolvency, the defendant was also entitled to judgment.

Judgment accordingly.

*In re Benjamin Chandler, gent, one, &c.*

Nov. 25, 1856.

ATTORNEY—STRIKING OFF ROLLS, WHERE STRUCK  
OFF IN CHANCERY FOR MISCONDUCT.

*A rule was made absolute to strike off the Rolls an attorney who had been struck off the Rolls of the Court of Chancery for misconduct, upon an affidavit that such person so struck off was the same person now sought to be removed from the Rolls of this Court.*

THIS was a rule nisi granted on November 17 last to strike off the rolls of this court one Benjamin Chandler the Younger, of Sherborne, Dorsetshire, who had been struck off the rolls of the High Court of Chancery for misconduct, by an order of the Master of the Rolls, dated 16th April last. It appeared that he had been admitted an attorney of this

court in Trinity Term, 1842. The rule was obtained on an affidavit that the person so struck off was the same person as was admitted on the above date.

*H. J. Hodgson*, for the Incorporated Law Society, in support.

The Court made the rule absolute.

No cause was shown against the rule.\*

### Queen's Bench Practice Court.

(Coram Crompton, J.)

*Ex parte Jones*. Nov. 22, 1856.

ARTICLED CLERK—SERVICE TO PALATINE ATTORNEY  
—ADMISSION IN SUPERIOR COURTS.

*Application under the 16 & 17 Vic. c. 59, s. 7, granted that the service of an articulated clerk to a County Palatine solicitor, and whose articles had been duly enrolled in the Palatine Court, and the duty of £60 paid, should reckon from their execution, in order to his admission in the superior courts, and not from their enrolment, upon payment of the additional duty.*

It appeared that the applicant, Mr. Theophilus E. Jones, was articulated in February, 1852, to an attorney at Manchester, and that his articles were duly enrolled in the Court of Pleas for the County Palatine of Lancaster, and the stamp duty of £60 paid. On Nov. 7 last, the articles were enrolled in this court, and the additional duty was paid. This motion was now made under the 16 & 17 Vic. c. 59, s. 7, that the time of service under the articles might be computed from the date of the articles.

That section enacts that "where any person shall have become bound as a clerk in order to his admission as an attorney or solicitor in any of the courts of the counties palatine by articles or contract stamped with the said duty of £60, then upon payment of such further sum of money as with the said duty of £60 will make up the full stamp duty, which at the date of such articles or contract was payable by law on articles of clerkship in order to admission in any of the courts at Westminster, it shall be lawful for the Commissioners of Inland Revenue, and they are hereby required to stamp the said articles or contract with a stamp or stamps to denote such further duty, and thereupon such articles or contract shall be as valid and effectual for entitling such person to admission in any of the courts at Westminster as if the same had been duly stamped with such full duty in the first instance."

*Hughes* in support.

The Court granted the application.

\* A rule obtained on November 17, to strike off *Cheslyn Hall*, of New Boswell-court, Lincoln's-inn, who was admitted in this court in Hilary Term, 1835, and had been struck off the rolls of the Court of Chancery, by order of the Right Honourable the Vice-Chancellor Sir John Stuart, on June 27, 1856, for misconduct, was also made absolute on Nov. 25—no cause being shown.

*H. J. Hodgson*, for the Incorporated Law Society, appeared in support.

### Court of Common Pleas.

*Palmer v. Evans*. Nov. 25, 1856.

ATTORNEY—MISREPRESENTATION—COSTS OF ACTION  
—REFUNDING OVERPAYMENT.

*The clerk of the plaintiff's attorney, in an action on bills of exchange, had received from the defendant costs for judgment and execution, which he represented untruly to have been signed and issued. It appeared, however, that the attorney himself did not know of such representation, although he received the money. The attorney was ordered to refund the overpayment, and to pay the costs of a rule to answer the matters of affidavits which had been obtained.*

THIS was a rule nisi on Mr. Eyre, the plaintiff's attorney in this action on two bills of exchange, under the 18 & 19 Vic. c. 67, to answer the matters of the affidavits. It appeared that the defendant, upon being served, had gone to Mr. Eyre's office, when he was informed by a clerk that judgment had been signed and execution issued, whereas such was not the case, and the defendant paid £5 10s. on this representation.

*Phipson* shewed cause against the rule, which was supported by *Macnamara*.

The Court said that the clerk had received the sum in excess of what he was entitled, but it did not appear that the matter was brought home to the knowledge of the attorney. Under these circumstances, the rule would be discharged upon repayment of such excess and the costs of this rule.

### Court of Exchequer.

*Legg v. Tucker*. Nov. 25, 1856.

ACTION FOR DAMAGES TO HORSE—CONTRACT—TORT  
—COUNTY COURT ACT—COSTS.

*Held, that an action on the case to recover damages for injuries sustained by the plaintiff's horse, which he had delivered to the defendant, a livery stable keeper, to be taken care of in a separate stall, and which had sustained such injuries by being put in with other horses, is an action of contract and not in tort.*

*Where, therefore, a less sum than £20 was recovered, held, that the plaintiff was not entitled to costs under the 13 & 14 Vic. c. 61, s. 11.*

THIS was an action on the case to recover damages for injuries sustained by the plaintiff's horse, which he had delivered to the defendant, a livery and bait stable keeper, to be taken care of in a separate stall. It appeared that the horse was put in a stall with other horses and sustained the injuries in question. The defendant pleaded not guilty, and on the trial before *Martin, B.*, the plaintiff obtained a verdict with £7 damages. Judgment for the costs having been entered on the *postea* this rule nisi was obtained to strike out so much as awarded such costs.

*Lush* shewed cause.

The Court (without calling on *Prentice* in support) said that the action was substantially for a breach of contract, and that as the verdict was for a less sum than £20, the plaintiff was, under the 13 & 14 Vic. c. 61, s. 11, not entitled to costs, and the rule was accordingly made absolute.

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

## Common Law Appeals.

## ACT OF BANKRUPTCY.

See *Bankrupt.*

## AMBIGUITY.

See *Plea.*

## ANCIENT LIGHTS.

*Custom of London—Prescriptive Act.*—The custom of London, which enabled the owner of an ancient house to erect a new house on the old foundations to any height, and so obstruct the access of light through his neighbor's ancient windows is abrogated by the third section of the Prescriptive Act, 2 & 3 Will. 4, c. 71. *Truscott v. Merchant Tailors' Company*, 11 Exch. 855.

## ASSIGNEE.

See *Insolvent.*

## BANKRUPT.

*Fraudulent transfer—Sale of goods under market value—Act of bankruptcy.*—A sale by a trader of his goods at prices considerably below their market value is not of itself a fraudulent transfer within the 67th section of the Bankrupt Act, 12 & 13 Vict. c. 106. To render the transaction fraudulent within that act the seller must have intended by such sale to defeat or delay his creditors, and the purchaser must have had reason to know that such was the object of the seller.

Therefore where a trader from time to time during several months sold his goods to the defendant at prices from £40 to £50 per cent. less than he paid for them and afterwards became bankrupt, *Held*, in the Exchequer Chamber, that it was properly left to the jury to say whether the dealings between the defendant and the bankrupt were real sales by the bankrupt to the defendant, each endeavouring to make the best bargain he could for himself, and, if so, such sales were not an act of bankruptcy as fraudulent transfers. *Lee v. Hart*, 10 Exch. 555; 11 Exch. 880.

## BOND.

*As to mode of carrying on trade—Validity of—Restraint of trade.*—A bond was made by eighteen persons, in which each obligor was described as a cotton-spinner of W. or of H., and by which each was bound to plaintiff in a separate sum of £500. The condition recited that the obligors were respectively owners of spinning mills in W. and H., and employed in them many workpeople; that there were societies and combinations among divers persons, whereby persons otherwise willing to be employed were deterred by fear of social persecution and other injuries from hiring themselves to work, and whereby the legal control of the obligors of their property was injuriously interfered with; that these combinations were sustained by funds arbitrarily levied and extorted by way of tax or rate on the persons employed by and receiving wages from the obligors; and in the opinion of the obligors it had become necessary to take measures for vindicating their legal rights to the control of their property, which would also best sustain the rights of the labourer to the free disposal of his skill and industry: therefore the obligors had agreed to carry on their works, in regard to the

amount of wages, the times of the engagement of workpeople, the hour of work, the suspending of work and the general discipline and management of their works, in conformity to law for twelve calendar months in conformity with the resolutions of a majority of the obligors present at any meeting to be convened; that for the purpose of carrying the agreement into effect the obligors entered into the bond; and the condition was that, if the obligors, for twelve calendar months, should carry on or wholly or partially suspend carrying on their works in regard to the matters aforesaid in conformity with the resolutions of a majority of the obligors present at a meeting to be held as mentioned, then the bond as to each person so performing to be void; and the days, place, and other circumstances of the proposed meeting were set out; the obligor to hold the money recovered in trust for all the obligors; with power for a majority of the obligors present to release the obligors from performance.

An action being brought on this bond against one of the obligors, he, by plea, set out the bond and condition and alleged that there was no consideration except as appeared by the condition.

On demurrer to the plea:

*Held*, by Lord Campbell, C. J., and Crompton, J., (*dissentiente Erle, J.*) that the bond was void as being in restraint of trade; and judgment was given in the Queen's Bench for defendant.

Judgment affirmed in Exchequer Chamber. *Hilton v. Eckersley*, 6 Ellis and B. 47, 48.

## CALLS.

See *Cost-book mine.*

## COLLIERS.

See *Ramsgate Harbour.*

## CONSTRUCTION OF WILL.

See *Will.*

## CONTRACT.

See *Frauds, Statute of.*

## CONVERSION.

See *Insolvent.*

## COST-BOOK MINE.

*Transfer of shares—Registering—Calls—Indemnity to transferor.*—The plaintiff, the owner of 500 shares in a cost-book mine, according to the rules of which the person registered as owner in the cost-book was subject to the payment of calls in respect of the shares so long as he continued registered as the owner, sold his shares to the defendant, and delivered to him a document addressed to the secretary of the mine, by which the plaintiff requested the secretary to enter a transfer of the shares from his name to that of the transferee, subject to the rules, but leaving a blank for the name of the transferee to be filled up by the holder of the document which also contained at the foot an agreement on the part of the transferee to accept the shares subject to the rules, with a blank also left for the name of the party so agreeing. The defendant did not cause the shares to be registered in his name; and the plaintiff in consequence of his name being continued in the cost-book as the owner was compelled to pay some subsequent calls.

*Held*, by the Exchequer Chamber, that there was no legal obligation on the defendant to cause the shares to be registered in his name as the owner, but that there was an implied obligation on him to indemnify the plaintiff against calls made during the time when he was virtually and potentially the owner of the shares.

*Walker v. Bartlett*, 18 Com. B. 845.

And see *Frauds, Statute of*; *Stamp*.

## DILAPIDATIONS.

See *Incumbent*.

## DISTRESS.

*Excessive, for arrears of rent—Right of action—Tender—Replevin*.—A declaration alleged that the plaintiff held certain premises as tenant thereof to the defendant, and that the defendant wrongfully distrained upon the premises certain goods of the plaintiff, as a distress for alleged arrears of rent, to wit, the sum of £6 3s., by the defendant then pretended to be due and in arrear; and the defendant wrongfully remained in possession of the said goods under colour of the said distress until the plaintiff was compelled to pay, and did pay, to the defendant the pretended arrears of rent and costs of the distress, in order to regain possession of the goods; whereas, in truth, a small part only, to wit, £1 16s. 9d., of the said pretended arrears was due: *Held*, in the Exchequer Chamber, that the count disclosed no cause of action, for, as the distress was lawful, the defendant was entitled to a tender of the amount really due, and upon his refusal to accept that sum the plaintiff's course was to replevy the goods. *Crompton, J., dissentiente. Glynn v. Thomas*, 11 Exch. 870.

## ERROR.

*On judgment for plaintiff on demurrer to replication to plea*.—A defendant may bring error on a judgment for the plaintiff on demurrer to a replication to one of several pleas, though the plaintiff has subsequently discontinued the action except as to the costs of the demurrer. *Shepherd v. Sharp*, 1 H. & N. 115.

## ESTATE TAIL.

See *Will*.

## EVIDENCE.

See *Insolvent*; *Waste land*.

## EXCHANGE OF LIVING.

See *Incumbent*.

## FRAUDS, STATUTE OF.

*Contract for sale of cost-book mine shares*.—A contract for the sale of shares in a cost-book mine is not necessarily a contract for an interest in land, within the 4th section of the statute of frauds. *Walker v. Bartlett*, 18 Com. B. 845.

## FRAUDULENT PREFERENCE.

See *Insolvent*.

## INCUMBENT.

*Dilapidations—Exchange of livings—Simony*.—To a declaration by A. an incoming against B. an outgoing incumbent for dilapidations to the rectory house and premises, B. pleaded that A. being rector of C. and B. incumbent of D., it was agreed between them with the consent of their respective patrons and diocesans, that they should exchange their respective livings in their then state and condition, and that the plaintiff should not call upon the defendant to pay for the repairs in the declaration mentioned or for any or either of them: *Held*, by

the Exchequer Chamber, affirming the judgment of the Court of Common Pleas that the plea did not necessarily disclose a simoniacal contract. *Goldham v. Edwards*, 18 Com. B. 889.

## INDEMNITY.

See *Cost-book mine*.

## INSOLVENT.

*Trover by assignee—Conversion—Evidence—Warrant of attorney—Fraudulent preference*.—Trover by the assignee of F., an insolvent debtor for a conversion in the time of the insolvent. Pleas amongst others, Not guilty and a plea justifying the conversion, as being a seizure under a fi. fa. issued before the insolvency on a judgment against F. in favour of the defendant. Replication: that F., within three months before his imprisonment, being in insolvent circumstances, with a view of petitioning the court, fraudulently charged his estate in favour of defendant being a creditor by a warrant of attorney void within stat. 1 & 2 Vict. c. 110, s. 59, and that the judgment was on that warrant of attorney. Issue was taken on the replication. The verdict was found for the plaintiff on all the issues; and he had judgment. Error was brought on the record, and also on a bill of exceptions, which set forth the evidence. By this it appeared that the judgment was on a warrant of attorney, voluntarily given with a view of petitioning the court, and that defendant had disposed of the goods seized before the insolvency. The judge ruled that this was evidence of a conversion, to which ruling there was an exception.

*Held*, by *Jervis, C. J., Alderson, B., Creswell, J., and Martin, B.*, with whom Sir *W. Maule*, before his retirement from the Bench, agreed, that the warrant of attorney was under stat. 1 & 2 Vict. c. 110, s. 59, wholly void and not merely voidable, that the assignee might sue and that trover for a conversion of F.'s goods before the insolvency was a proper form of action; that therefore the judgment of the Court of Queen's Bench was right and the ruling unexceptionable.

*Held*, by *Williams, J., and Crowder, J.*, with whom Lord *Wensleydale*, before his retirement from the Bench, agreed, that the warrant of attorney was not absolutely void but valid until the assignee elected to avoid it. That there was consequently no wrongful conversion before the insolvency, and that the plaintiff, if entitled to recover at all, could not recover in trover; and that there ought to be a *venire de novo* on the bill of exceptions on the ruling as to not guilty and judgment *non obstante verdicto* on the insufficiency of the replication to the special plea.

On the bill of exceptions it appeared that the plaintiff had tendered in evidence an adjudication of the Insolvent Court discharging F. after he had been in custody for one year, and had proved that immediately afterwards he was allowed to go free by the defendant, who was his only detaining creditor. The defendant's counsel offered to admit that such an order was made, but objected to its being read. The judge ruled that it might be read; to which the defendant excepted. It was read; and it stated the detainer for a year to be on the ground that the warrant of attorney was a fraudulent preference.

*Held*, by the whole Court, that the adjudication was admissible, not as evidence of the truth of the ground on which it purported to be made, but because that adjudication, followed by the immediate discharge of F., was evidence of defendant's complicity with F., and that the plaintiff was not bound to take the defendant's admission of its effect.

Judgment of the Court of Queen's Bench affirmed.  
*Billiter v. Young*, 6 Ellis and B. 1, 2.

#### LOCAL AND PERSONAL ACTS.

*Public, local, and personal within meaning of 5 & 6 Vic. c. 97.*—Statutes which, since the resolution of the House of Commons in 1801, have been printed by the King's printers amongst the public local, and personal acts, are statutes commonly called public, local, and personal within the meaning of the 5 & 6 Vic. c. 97.

*Shepherd v. Sharp*, 1 Hurlstone and N. 115.

And see *Ramsgate Harbour Act*, 1.

LONDON, CUSTOM OF.

See *Ancient lights*.

MANOR, LORD OF.

See *Waste land*.

#### PLEA.

*Construction of—Ambiguity.*—Held, that a plea, whether coming before the court on motion for a judgment *non obstante veredicto*, or on demurrer, is to receive a fair and reasonable construction, and if ambiguous to be construed most strongly against the party pleading. *Goldham v. Edwards*, 18 Com. B. 889.

#### POOR RATE COLLECTOR.

*Liability of guardians for salary.*—Held, in the Exchequer Chamber affirming the judgment of the Court of Exchequer, that guardians of the poor are not liable to pay the salary of a collector of poor's rate appointed by them in pursuance of an order of the Poor Law Commissioners. *Smart v. Guardians of West Ham Union*, 11 Exch. 867.

#### PREScriptive ACT.

See *Ancient lights*.

#### RAMSGATE HARBOUR ACT.

I. *Construction of—Local and personal.*—By statute 22 Geo. 3, c. 40, the harbour of Ramsgate was vested in trustees, upon certain trusts and subject thereto, was vested in and to be disposed of by the authority of Parliament. Statute 32 Geo. 3, c. 74, an "Act for the maintenance and improvement of the harbour of Ramsgate" repealing the former act, vested the harbour in trustees, who were empowered to impose duties on all ships passing Ramsgate, to be paid to the collector of the customs, &c., in the port whence such ships should set forth or where such ships should arrive. By s. 10, foreign ships are to pay the same rates as ships cleared out of British ports, such rates to be levied in any part of her Majesty's dominions; s. 11, empowers collectors to enter and measure ships and imposes penalties on persons obstructing them. By s. 11, on producing his receipt for payment of duties, the master is entitled to an allowance from merchants or importers. By s. 13, accounts are to be transmitted to the receiver-general of the customs. Section 15 gives powers to collectors to distrain on non-payment of duties. By s. 58, accounts are to be annually audited and submitted to Parliament. By s. 72, penalties may be levied by distress, and sale by the warrant of any justice of the peace in the town where the offender resides; and in case no sufficient distress is found, the justice may commit the offender to prison. *Held*, in the Exchequer Chamber (affirming the judgment of the Court of Exchequer) that the 32 Geo. 3, c. 74, is an

act of a local and personal nature within the meaning of 5 & 6 Vic. c. 97, having a local object, the improvement of the harbour, and affecting only certain specified classes of her Majesty's subjects. *Shepherd v. Sharp*, 1 Hurlstone and N., 115.

2. *Exemption from payment of duty—Coasting vessels—Colliers.*—The 32 Geo. 3, c. 74, s. 14, which exempts coasting vessels from payment of duty to *Ramsgate Harbour* oftener than once in a year, includes coasting vessels carrying only coal. *Shepherd v. Moore*, 1 H. and N. 125.

#### REPLEVIN.

See *Distress*.

#### RESTRAINT OF TRADE.

See *Bond*.

#### SIMONY.

See *Incumbent*.

#### STAMP.

*Transfer of cost-book mine shares.*—A transfer of shares in a cost-book mine need not be stamped. *Walker v. Bartlett*, 18 Com. B. 845.

#### STATUTE OF FRAUDS.

See *Frauds, statute of*.

#### TENDER.

See *Distress*.

#### TRANSFER OF SHARES.

See *Cost-book mine; Stamp*.

#### TROVER.

See *Insolvent*.

#### WARRANT OF ATTORNEY.

See *Insolvent*.

#### WASTE LAND.

*Grants by lord of manor—Evidence.*—Upon a question whether a piece of waste land, lying between a highway and the plaintiff's, inclosed land, belonged to the plaintiff, or to the lord of the manor.

Held, that grants by the lord of other slips of waste land on either side of the same road, abutting on inclosed lands of the lord himself, and of other persons, were admissible for the purpose of shewing that the *locus in quo* was part of the waste of the manor without shewing continuity. *Dewdy v. Simpson*, 18 Com. B. 831.

#### WILL.

*Construction—Estate tail.*—A testator by his will made in 1812, after giving his property to his wife "for her natural life," devised as followed: "also I give to my grandson R. P. that house, &c., with the garden now in the tenure of, &c. Also I give to my grand-daughter Ann the house I now live in, with the garden, &c. Also I give to my two granddaughters S. P. and J. P., a house, &c. Also I give to the said S. P. and J. P. a piece of arable land now in the tenure of, &c., all to be equally divided. Also I give to my grandson R. P. £600 Five per cents. Also I give to my granddaughter Ann £600 Five per cents. Also I give to my two granddaughters S. P. and J. P. £400 each now on bond in the Bank of England. In case either of them die without issue, that portion to be divided amongst the survivors."

Held, that Ann took an estate tail in the house and land devised to her. *Thomas v. Butt*, 1 H. and N. 109.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, DECEMBER 13, 1856.

### THE SOLICITORS' JOURNAL AND REPORTER.

#### THE "LAW TIMES" AND THE LAW SOCIETIES.

WE presume that most of our readers have received the Prospectus of a new periodical work, to be called "THE SOLICITORS' JOURNAL AND REPORTER," issued by "The Law Newspaper Company Limited," wherein it is intended to incorporate "THE LEGAL OBSERVER," to enlarge its scope, and add thereto the cases comprised in *The Weekly Reporter*, under an arrangement with its proprietors to supply the new publication with the required number of copies each week.

The *Law Times* of the 6th instant, in an address to the solicitors of Great Britain and Ireland, says—

"That an attempt is being made to persuade you (the solicitors) that you are not represented by the press, because the *Law Times*, which has been fighting your battles strenuously, and not unsuccessfully, for nearly fourteen years, treats you as a branch of the general body of 'the lawyers,' and represents the whole, of which you form the most important part."

The solicitors are then called upon to resist this endeavour to separate them from the profession to which they belong; but the new SOLICITORS' JOURNAL, we doubt not, will be so conducted as to unite, rather than separate, them from the profession at large, and will especially promote the due administration of justice, and the best interests of the suitors. Whilst advocating their own rights and privileges, the solicitors will, of course, pay all due respect both to the Bench and the Bar, and uphold the dignity of the noble profession of which they are members. Our contemporary, however, thus proceeds in his remonstrance:—

"You have made vast progress in social status of late years, you have assumed a position very different from that formerly assigned to you, and you have established the recognition of that position, both publicly and professionally. To separate from the whole body, and become a class apart, would be to undo all that has been done by you and for you. It would be to go back again to a lower grade; it would be an admission of a want of title to hold equal rank with the rest of the lawyers. Formerly the solicitors were looked upon as a lower branch of the profession. The *Law Times* has led them onward, and procured for them the recognition of their true

importance as, at least, an equal part of the whole, and shown their title to a consequent status of social equality; and now you are asked to exclude yourselves; you are told that you are not properly included under the general title of 'the lawyers,' and that a journal advocating the rights and privileges, promoting the welfare and maintaining the character, of 'the lawyers and the law' is not to be deemed the representative, the advocate, and the journal of 'the solicitors.'

"The principle by which we have been guided in the treatment of all professional questions, has been to look upon all the lawyers as constituting ONE PROFESSION, having various branches, intimately connected, with common interest, equal in honour, and entitled to equal privileges and esteem, and to equal social rank; and we have claimed for all the same regard in the eyes of the Legislature, as well as in that of the public and of one another. To secure this, we have never ceased to exhort to educational improvement and the preservation of a high tone of professional honour. It would be strange, indeed, if the solicitors could be induced now, by those who take narrower views of the question of professional status, to say that they are not, or do not desire to be, comprised within the general term 'the lawyers,' inasmuch that 'a journal of the law and the lawyers' is not to be deemed a journal of 'the solicitors.'

"We ask you, then, solicitors of the United Kingdom, are you desirous to be separated from the great and powerful body of the united lawyers—great and powerful while they act together and pull together as one body against the common enemy—but powerless if divided? Is it your wish that the *Law Times*, instead of bringing together all the lawyers and all the law, should separate you from the rest, and thereby stamp you with a social inferiority which is not recognised here, and which the *Law Times* has done so much to obliterate? Until you tell us so, we shall be unwilling to believe that such is your desire. We ask you, for your own credit, and in justice to ourselves, both with respect to the principles we have hitherto pursued in the treatment of professional topics, and to guide our judgment for the future, to inform us, each one of you, if only in half-a-dozen words in an envelope, if you approve the course we have pursued, or if you desire that we should sever you from the rest of the lawyers, with the hazard of throwing you back again to the status from which we started with you fourteen years ago."

We cannot understand how it can be as—

\* The attention of our readers is requested to the passages marked in *italics*, on which some observations will hereafter be submitted to them.



serted, with any semblance of reason, that the attorneys will "go back again to a lower grade" in the profession by establishing a journal of their own, and maintaining the independence of their branch of the profession. Are the surgeons degraded in the medical profession by having an effectual system of education, a strict examination of candidates, and a college of their own, independently of the College of Physicians? Or are the general practitioners in medicine, who have to prepare for and undergo a severe examination at the Hall of Apothecaries, degraded by holding a separate and independent position?

It would appear from the preceding statement of its grievance, as if the *Law Times*, thirteen years ago, was the first and only advocate of the rights and interests of the suffering attorneys and solicitors: that no periodical work then existed as an organ of communication between the members of that branch of the profession; and moreover that there were no organised societies of attorneys in town or country to consider the evils, injuries, or inconveniences under which they laboured, or the best measures for removing them; that no steps were ever taken, on the part of the profession, by petitions to the Houses of Parliament, by addresses or deputations to the members; or, in short, that any exertion whatever was bestowed until the *Law Times* came into existence!

Now let us glance at some few of the measures which were achieved by the attorneys and solicitors through the medium of their several societies, before the publication of the first number of the *Law Times*, and it was not for a considerable period that it assumed the high position of "representing in the press the whole of the lawyers."

It may be that the "old Law Society," as it was called, which was founded upwards of a century ago (when the inns of court commenced their exclusion of attorneys), was not conspicuous for energetic action; yet it rendered good service. And the Metropolitan Law Society (established in 1819) had at least the merit of originating the measure by which the stamp duties on law proceedings—a great tax on justice—were abolished. There were also other associations of attorneys which tended to promote fair and honourable practice, such as "the Northern Agents Society," and the various provincial law societies which assembled twice a year at the assizes.

Then came the Law Institution, commenced in 1825, and incorporated in 1831. Attempts had been previously made, but ineffectually, to unite the great body of attorneys, but until the latter year without success. This Royal charter, granted when Lord Brougham was Chancellor, and Lord Denman Attorney-General, was a great step forward in the same direction of improvement that had been effected in the medical profes-

sion. An extensive library was formed, a hall of meeting was erected for the members to assemble together,\* and, in 1833, three courses of lectures on the principal branches of law were instituted. Then in 1836 rules of court, at the instance of the law society, were made for the examination of all candidates for the roll of attorneys.

To prevent the frauds which previously existed by men practising in the names of deceased, lunatic, or absconded attorneys, a bill for the annual registration of attorneys was prepared by the law society in 1841 (though not passed till 1843). In the year 1842, the Six Clerks' Office was abolished, and the duties of the sworn clerks transferred to the solicitors. Up to this time, also, the various projects for establishing local or small debt courts were successfully resisted. An active supervision was established in cases of malpractice, and measures adopted for promoting honourable practice, and amicably settling disputes between practitioners, greatly to the advantage of their clients, and the saving of useless expense.

Let it be recollected, also, that during the last nine years the Metropolitan and Provincial Law Association has been in energetic action, and, with the numerous societies in the country, have powerfully united with the Incorporated Law Society in promoting many important measures. Our contemporary appears to take, to the credit side of his account with the profession, all that has been suggested or effected by the various petitions, reports, and exertions made by the societies at Birmingham, Bristol, Exeter, Gloucester, Hull, Kent, Leeds, Lincoln, Liverpool, Manchester, Newcastle, Wolverhampton, Worcester, and York. Surely, the committees of these various societies, composed of men of eminence in their profession, of ability, energy, and experience, are not to be treated as ignorant persons, looking up to, and guided only by, the writers in the *Law Times*, as if they had no information or will of their own!

When claiming the merit of the measures adopted during the last thirteen years, let it be recollected that the Bar has gained largely in the monopoly of legal appointments, under various statutes, during that period, to the exclusion of attorneys. Even within the last two years, the Bar are proposing to establish a law university, consisting only of members and students of the Bar; and the inns of court have increased the stringency of the regulations by which attorneys are precluded from keeping Terms, in order to be called to the Bar.

That the *Law Times* has availed itself of the information collected, and the proceedings adopted, by the town and country solicitors, we have no inclination to deny; nor that it

\* Was this improperly "separating" themselves from the inns of court, to whose libraries and halls they were not allowed admission?

has received valuable aid from its provincial correspondents. Neither do we dispute that sometimes it has ably supported the views of the profession. But, on the other hand, we maintain that many of its articles have been injurious to the general interest of the solicitors.

One of the most serious complaints against the conductors of the *Law Times* is the attempt which has been so pertinaciously made to disunite the *London* and *Provincial* attorneys. For years that journal has been labouring to convince our brethren in the country that the leading solicitors here have no other view than metropolitan interests, and to a certain extent these reiterated misrepresentations have been successful. The efforts, however, of the Metropolitan and Provincial Law Association have, in a great degree, refuted this imputation on the London profession.

We cannot forget, also, that (with very few recent exceptions) during nearly the whole existence of the *Law Times* the proceedings of the Incorporated Law Society have been the constant subject of censure. The members of the council of that society, who assemble numerously every week, may be supposed, as well from their own experience as from the information of their junior partners or their brethren generally, to know something of the true interests of the profession and the best means of advancing those interests;—but their labours are deemed useless or unwise unless the *Law Times* happens to take the same view! It is not too much to say that whatever may be the labours of other associations or the exertions of the legal press in arousing the profession to the consideration of their own interests, it is no small advantage that there should be a permanent and chartered body, cautiously engaged in considering the measures suggested, as a sort of upper house of the legal fraternity. We much question, indeed, whether the support or opposition to many of the most important measures in Parliament would have received the attention of the authorities, or been so successful as they have been, if the Incorporated Law Society had not added the weight of its judgment and experience.

We have several other topics to urge on this subject, but as we shall have an early opportunity of resuming the consideration of the matter in question, we close our remarks for the present.

## TESTAMENTARY JURISDICTION OF THE ECCLESIASTICAL COURTS.

EXTRACTS FROM THE LETTERS OF SIR FITZROY KELLY AND MR. COLLIER.

SIR RICHARD BETHELL, the Attorney-General, has announced the intention of the Government again to introduce into Parliament a bill for the abolition of the Testamentary Jurisdiction of the Ecclesiastical

Courts; and two important letters on this subject have appeared in the newspapers, some passages of which we deem it useful to submit to our readers.

The letter of Sir Fitzroy Kelly is addressed to Lord Brougham, and comprises the following statements and observations:—

“The jurisdiction over wills of personality is confined to courts spiritual scattered in great numbers throughout the kingdom.

“In all of these, to say nothing of a variety of other evils universally admitted, the law is administered upon written pleadings and written evidence, adopted upon the very worst principle that could well be devised. Instead of the most simple and concise statement of the will to be propounded on the one side, and of the objection to the grant of probate on the other, the cause proceeds upon an endless succession of verbose and complicated libels, articles, personal answers, and allegations, until what may be called the record is completed. Then, as to the evidence, instead of a personal *voir dire* examination of parties and witnesses in open court, as soon as the issues of fact are ascertained, the whole evidence is made to consist of written depositions and answers to interrogatories; the examination in chief being often taken on one side before the case upon the other side is known; the cross interrogatories exhibited on the other side in utter ignorance of the evidence in chief; and the witnesses on both sides giving their evidence in private, unseen and unheard by the opposite parties, who have to deal with and perhaps to contradict their testimony, and by the judges who have to pronounce judgment upon it when the cause is to be decided. The results of this vicious system are beyond calculation.

“Three great questions seem to me to have arisen in considering the nature of the reform to be effected in this branch of our judicial institutions.

“1st. Are the existing courts to be continued? and if not, what manner of tribunal is to be substituted for them—what description of pleadings, evidence, and procedure?

“2nd. Is the new court to be open exclusively to the advocates and proctors of Doctors' Commons, as heretofore, or to barristers, attorneys, and solicitors at large?

“3rd. Is the whole business of the kingdom, in granting probates and letters of administration (contentious and non-contentious), to be confined to the court in London; or the common form business to be conducted by registrars or other proper officers, in a given number of districts in the country?

“The bills which have hitherto proceeded from the Government, in accordance with the reports of commissions, and in conformity to the great majority of opinions expressed from time to time in both Houses of Parliament, have provided for the total abolition of the jurisdiction, in matters testamentary, of all existing ecclesiastical courts.

“So likewise for the opening of the new court to the bar at large, and to all attorneys and solicitors. Thus far all was well. But in two points, in both of which the recommendations of the commission and the public voice were alike disregarded, these bills were necessarily suicidal, whenever the time should arrive for the discussion of them in the House of Commons.

“1st. They made the new court, in substance if not in name, another Court of Chancery, and thus perpetuated a system of voluminous pleadings and of written evidence, or of evidence taken before examiners in private, and not in court and before

the judge or jury who upon that evidence were to decide the case.

"2nd. They established but one central court, and thus deprived the inhabitants of the whole country, with the exception of the metropolis, of the means of proving even unopposed wills, without employing attorneys or agents, or coming up themselves in person to the courts in London, and this set a numerical majority of the House of Commons in opposition to the bills.

"All former measures having on one or other of the above grounds entirely failed, three bills, one by the Solicitor-General, another by Mr. Collier, and a third by myself, were brought into the House of Commons during the last session.

"Mr. Collier's bill abolished all existing jurisdictions, and referred all causes testamentary to the courts of common law. This scheme, though good in principle, was, I think, impracticable. The judges would not have consented to it, and the courts had no machinery to carry such a measure into effect. Bethell's bill contained much that was no doubt wise and just, and well calculated to attain the end in view; but it excluded all common form jurisdiction in the country, and again made the great court in London a Court of Chancery. At length he and I met, and by an amalgamation of his measure and mine we framed and agreed upon a bill which (except upon a single point on which I doubt not that, if his overwhelming occupations would have allowed him to give me one hour before the night when the bill was to have gone into committee, we should have been perfectly reconciled) would have been accepted almost unanimously by both Houses of Parliament, and would entirely have satisfied the country.

"By this bill all jurisdiction in matters testamentary in all existing courts was abolished. A new court was established, the judge of which was, in rank, jurisdiction, and salary, to have been one of the superior class. This court was to have power to deal with wills of real as well as of personal estate; to construe the terms of all wills, and to adjudge upon the right to devise and legacies; and to administer the whole estate, real and personal, of testators and intestates: above all, in pleadings, evidence, and procedure, it was to be a common law court—the pleadings in the shortest and simplest form; the evidence by parties and witnesses upon examination and cross-examination *visd voce* in open court, and the procedure prompt and practical, so as to ensure the cheapest and speediest mode in which justice could be administered. The judge was to have all the jurisdiction in respect of causes testamentary now possessed for any purpose by the superior courts of common law, the Court of Chancery, and the present ecclesiastical courts. Registrars were to be appointed (officers of the court above), who were to grant probate and letters of administration in unopposed cases, or what is called common form business in specified districts throughout the country. All contentious business, however, was to be carried on in the chief court in London. Advocates were to be admitted to practise at the bar, and the bar to practise in the new court. The common form business now transacted by proctors was to be committed to officers of the court, chosen at first from among existing officers, or advocates or proctors. Proctors to be admitted to practise as attorneys and solicitors, and attorneys and solicitors to practise in the new court. Compensation was to be made to proctors and their articulated clerks, and others preju-

diced by the bill; and a fee fund to be established, out of which this compensation was to be paid. The judge of the court was to have power to make rules (subject to the revision of the Chancellor and others) as to pleadings, practice, procedure, and costs.

"This was the substance of the measure. It had obtained the sanction of all those members of the House of Commons who had taken a leading part in the debates on former bills; it would of course have been supported by the Government party, and I had secured the support of the great majority of the party with which I am connected. It would have been unopposed in the House of Lords, and I can scarcely understand to this moment why, in fact, it was not passed. But as the end of the session was fast approaching it was suddenly withdrawn, with no other reason assigned than that an evening could not be found to carry it through committee.

"I hope and believe that it will be again introduced in the very beginning of the session."

"By the rules and orders that may be made a cause would be instituted by the mere exhibiting of a will, with a declaration that it is well executed and attested according to law, and that the executors, or devisees, or legatees, demand that it should be proved and established. To this the answer would be equally simple, that the testator was of unsound mind, or that the will was obtained by fraud, or is a forgery, or not duly executed and attested according to law. The parties would then be called upon, in a way easily to be provided, either to agree upon the facts, when the opinion of the court could be taken, as upon a special case, or to state the points of fact in dispute, which may be tried by the judge with or without a jury, at the option of the parties, and with or without the assistance of other judges. This seems to me to realise in theory (as I conscientiously believe it would in practice) the very perfection of the administration of justice, making the whole proceeding in the cause, from its institution to final judgment, as simple, as speedy, and as cheap as any that is practised by the law of any country."

Mr. Collier's letter, addressed "To the Editor of the *Law Amendment Journal*," contains the following passages:—

"Sir Fitzroy Kelly omits to notice the provisions for localising the jurisdiction, an object to which he justly attaches so much importance.

"I proposed to make the circuit of each county court judge a district for probate and administration, to appoint one or more registrars in each district, and to give the judge of the district in which the testator or intestate dwelt at the time of his death, power where the property was under £300, to determine all disputes relating to probate and administration, and to administer the assets.

"Sir Fitzroy Kelly provided for the local jurisdiction by adopting substantially the present diocesan districts to the number of thirty-two—little more than half the number of the county court districts, and by no means as convenient. To illustrate their inconvenience it is enough to say, that in order to prove a will an inhabitant of Liverpool would have had to go to Lancaster, or Birmingham to Worcester, of the counties of Rutland, Huntingdon, and Cambridge, to Peterborough, of Brighton to Lewes. These districts may have been suggested to Sir Fitzroy Kelly by the country proctors, to whom they might be convenient, however inconvenient to the public. I may add, that the county court dis-

tracts, having been recently set out by a commission with reference to the distribution of the population, the situation of towns, roads, railways, and other considerations of public convenience, it appears reasonable to adopt them in further localising the administration of any branch of the law; nor is it probable that the public would endure another set of local courts, with different and extremely inconvenient districts.

"Another paragraph in Sir Fitzroy Kelly's letter calls for notice from me:

"At length he (Sir Richard Bethell) and I met, and by an amalgamation of his measure and mine we framed and agreed upon a bill which (except upon a single point, on which I doubt not that, if his overwhelming occupations would have allowed him to give me one hour before the night when the bill was to have gone into committee, we should have been perfectly reconciled) would have been accepted almost unanimously by both Houses of Parliament, and would have entirely satisfied the country."

"The amended bill was not altogether an amalgamation of the bills of Sir Richard Bethell and Sir Fitzroy Kelly; but on the very important question of the county courts jurisdiction (to which Sir Fitzroy Kelly makes no allusion in his letter), Sir Richard Bethell adopted substantially the provisions of my bill, as appears by the 106th and following sections and the schedule of his amended bill.

"Sir Richard Bethell, Sir Fitzroy Kelly, and myself, met and discussed the three bills. The result of the discussion was, that Sir Richard Bethell expressed his concurrence in the view entertained by both Sir Fitzroy Kelly and myself, that the procedure should be as far as possible that of common law. As to the mode of providing for the local jurisdiction, however, he inclined to my view, and afterwards adopted it. In his speech on the subject (June 26, 1856), as reported in 'Hansard,' he thus expresses himself:—'He proposed to introduce a provision for the purpose not only of giving county courts authority to entertain contentious suits, where the property did not exceed £300, but also to entertain suits for the administration of estates which did not exceed a similar amount.' He was indebted for this suggestion to his honourable and learned friend (Mr. Collier); and the house would agree with him that this would be an improvement in the law with regard to the proof of wills; and that the great considerations of convenience, accessibility, and cheapness would be very much promoted by having a tribunal in which small estates not exceeding £300 might be readily administered and divided among the parties entitled, whether as creditors or legatees."

"I have dwelt upon this subject because I consider the county courts jurisdiction one of the most important elements of this question. Although I am opposed to extending the jurisdiction of those courts to matters of great importance or amount, I would give them jurisdiction as far as possible over all disputes of whatever description where the amount in dispute is small.

"I may notice one other provision in which Sir Fitzroy Kelly's bill differed both from that of Sir Richard Bethell and mine: the former proposed to retain the monopoly of the proctors in the common form business (changing their name to 'attorneys'); the two latter to abolish it.

"Sir Fitzroy Kelly, agreeing as he does with me that the proposition to transfer the jurisdiction to common law is 'good in principle,' I think somewhat

over estimates the force of the impediment which he believes to be opposed to this good principle by the reluctance of the judges to entertain the jurisdiction.

"The number of disputed testamentary causes tried annually in the Prerogative Court of Canterbury is, I believe, little more than forty—probably as many may be tried in the other ecclesiastical courts throughout the kingdom; if these, however, were transferred to common law they would not be necessarily additional causes, for while a judge and jury are trying the competency of a testator to dispose of his realty, the ecclesiastical courts are often trying the same question as to his personality. In such cases, to transfer the jurisdiction from Doctors'-commons to Westminster-hall would be merely to unite two parts of a cause which never ought to have been separated,

"I have great difficulty in believing that while a commission is inquiring into the expediency of reducing the number of the common law judges, on the alleged ground that they have not sufficient employment for their time, they should object to entertain this jurisdiction. Indeed, the question is not whether their jurisdiction should be extended or left as it is, but whether that which they now possess to try the validity of wills disposing of realty by ejectment or otherwise should be taken from them and transferred to a new court.

"It seems to me a question well deserving of the consideration of the society, whether, if jurisdiction over small properties of deceased persons were conferred upon the county court judges, aided by registrars, the higher class of testamentary business might not be transacted by the common law judges, assisted by a metropolitan registrar with a competent staff. Whether the jurisdiction should be given to all the courts or to one of them, say the Common Pleas, or to a certain number of the judges sitting as a separate court, are questions comparatively of detail, which I will not now discuss."

## NOTICES OF NEW BOOKS.

*The Practice of Courts of Justice in England and the United States.* By CONWAY ROBINSON. Volume I. *As to the Place and Time of a Transaction or Proceeding, treating chiefly of the Conflict of Laws and the Statute of Limitations.* Richmond, Virginia, 1854. A. Morris. pp. 677.

THIS is a work of great learning and research and although the author, an American, treats mainly of the law and practice of America, the volume is well entitled to a place in the law libraries of this country.

It is described in the title-page as "The Practice of Courts of Justice;" but it treats of the law as administered in those courts; and the following general subjects comprehended in the volume will shew the extensive nature of its contents:—

1. Of Fugitives from Justice, and Slaves going to a State where Slavery is not allowed.
2. Non-resident Guardian, Committee or Trustee, and Bail.
3. Private Wrongs.
4. Contracts.
5. Marriage and Divorce.

6. Property.
7. Estates of Decedents.
8. Decrees and other Judicial Acts.
9. Proof of Foreign Laws, Records, and Documents.
10. War and Aliens.
11. Suits of Foreign Sovereigns and Corporations.
12. Parties; Assignees, Administrators, and Heirs.
13. When and how Suit may be brought; and how defended.
14. Proceedings to operate beyond the State.
15. In what County or Corporation and in what Tribunal to sue.
16. Contracts and Proceedings on Sunday.
17. Computation of Time.
18. Relation of Client and Attorney.
19. Time for bringing Personal Actions generally.

Mr. Conway Robinson, in his preface, thus explains the object and design of his learned labours, which we trust he will be able at an early period to complete.

"I have been preparing the present work upon a plan to make it useful elsewhere as well as in Virginia;—considering that what is the basis of the practice in the English courts of Justice is the basis of the practice in nearly all the states of North America, quite as much, or almost as much, as in Virginia. Here the common law of England, so far as it is not repugnant to the principles of the bill of rights and constitution of the state, continues in full force and is the rule of decision, except in those respects wherein it is altered by the general assembly. Here, also, the right and benefit of all writs, remedial and judicial, given by any statute or act of Parliament made in aid of the common law prior to the 4th year of the reign of James the First, of a general nature, not local to England, are still saved so far as the same may consist with the bill of rights and constitution of this state and the acts of assembly.

"In many matters of great and general interest, there is a like practice in the courts of justice in England and in most of the states of this Union. This work, in treating of that practice, will shew how far it is founded on the common law or affected by statute. It will also set forth whatever there may be peculiar to the practice in Virginia; preserving of the former work all that is of value, and presenting in all matters of practice a view of the Virginia statutes and decisions to the period of this publication.

"The investigation required for such a work is, in a measure, limited by my library. This, however, enables me to examine quite a regular series of the reported decisions of the English courts, of the supreme and circuit courts of the United States, and the state courts of Massachusetts, New York, Pennsylvania, Maryland, Virginia, Kentucky, North Carolina, South Carolina, and Louisiana, and some of Texas, Mississippi, and other states.

"When I think of the time and labour expended on the present volume, and consider that this is but the beginning of the work, I am at times discouraged by the magnitude of the undertaking. It must treat of the causes for which personal actions may be maintained, the parties, pleadings and evidence, as well as the proceedings generally therein from the commencing to the final process; the proceedings in suits for land, in other civil cases at law, in cases before courts of probate and other cases of a miscellaneous nature; the cases for equitable jurisdiction,

the rules for the limitation thereof, the parties pleadings, and proceedings therein; and the proceedings in criminal causes."

From the contents of this first volume we select the following disquisition on the relation of client, counsel, and attorney—topics which are at all times interesting to the profession, and peculiarly so at the present time.

"1. *Rule in England as to an attorney.*

"It has been said that an attorney cannot sue for his bill till the business which he has been retained in, is terminated (1 Sid. 31). In the report in *Siderfin* no facts are stated to explain the decision of the court. It may be that the attorney on the very day of the assizes deserted the conduct of the cause, giving his client neither time nor opportunity to obtain other professional assistance; if so, the decision was proper (9 Bingh. 402). The next case is *Mordecai v. Solomon* (Sayer 172). There, the court observes, that where an attorney had commenced a suit upon the credit of a client he ought to proceed in it, although the client did not bring him money every time he applied for it; for aught that appears the conduct of the attorney might have been such as it is supposed to have been in the preceding case in *Siderfin* (9 Bingh. 402). It is, however, mentioned by Lord Eldon that the Court of Common Pleas, when he was there, held that an attorney having quitted his client before trial could not bring an action for his bill (14 Ves. 278). *Tindal, C.J.*, infers that the attorney must have deserted his client suddenly, and have left him unprepared to act for himself (9 Bingh. 402). Then there is the case of *Rowson v. Earle*, (4 C. and P. 45; 19 Eng. Com. Law. Rep. 266); in which Lord Tenterden held that an attorney who had given notice that he would not go on with a cause in the Court of Chancery without being supplied with money, had a right to desist from it, and might recover for the work done up to that time (9 Bingh. 402). In a case in which all the business charged for ended in April, and the client had from June been repeatedly applied to and apprised of the attorney's resolution, the Court of Common Pleas sustained an action commenced in October: being unwilling to say that he was not justified in refusing to proceed further (*Vassenden, &c., v. Browne*, 9 Bingh. 402; 28 Eng. Com. Law. Rep. 315).

"My notion of the rule," says *Bayley, B.*, "is that an attorney has a right to call upon the client from time to time, on reasonable notice, to make advances, and for the purpose of taking the cause to trial, to supply him with adequate funds, not to pay his costs, but the expenses out of pocket." He is not entitled arbitrarily to abandon a cause at any stage of it he may think fit, and insist on payment of his bill up to that time; but if he has good ground he may do so and may recover the amount of his bill (*Wadsworth v. Marshall, &c.*, 2 Cr. and Jer. 665). When, however, he desires to quit his client, he must give him reasonable notice. Although an attorney who undertakes a cause is not bound, at all events, to proceed with it if he is not supplied with funds, yet an attorney who has undertaken a defence with a view to trial, cannot abandon it on the eve of the assizes without giving his client a reasonable opportunity of resorting to other assistance (*Hoby v. Burd*, 8 Barn. and Ald. 350; 23 Eng. Com. Law. Rep. 91).

"I am not aware," says *Alderson, B.*, "that there is any case in which it has been held that an attorney

without reasonable notice, can sustain an action for part of his bill (*Harris, &c., v. Osborne*, 2 C. M. and R. 638). When an attorney is retained to prosecute or defend a cause, I consider, says Lord Lyndhurst, that he 'enters into a special contract to carry it on to its termination. I do not mean to say that under no circumstances can he put an end to this contract; but it cannot be put an end to without notice' (Id. 632.) 'The cases,' Baron Parke observes, 'may be explained either upon the supposition that this is to be treated as a general contract, or upon the supposition that it is a special contract to carry on the suit to its termination, subject to be put an end to on reasonable notice. In ancient times it was considered as an entire contract of which the attorney could not divest himself by any means; but in consequence of the increased expenses of suits in modern times the rule has been varied, and the attorney is at liberty to determine the contract on reasonable notice. The contract of the client is to pay at the completion of the suit; and unless the contract be defeated by reasonable notice, the attorney has no cause of action' (Id. 632, 8). Where the cause in which the attorney was retained was discontinued by him without previous notice to his client, and without his shewing why he had not proceeded in it, the attorney's action for work and labour in the cause resulted in a verdict for the defendant (*Nicholls v. Wilson*, 11 M. and W. 106).

#### "2. Rule in England as to counsel.

"A bill of a counsellor-at-law against a solicitor for fees was (on demurrer) dismissed in the fifth year of Charles the First (*Moor v. Row*, 1 Ch. Rep. 38). 'Can it be thought,' said Lord Hardwicke, 'that this court will suffer a gentleman of the bar to maintain an action for fees?' (2 Atk. 332.) The Roman orators 'practised *gratis*, for honour merely, or at most for the sake of gaining influence; and so likewise,' observes Sir William Blackstone, 'it is established with us that a counsel can maintain no action for his fees; which are given not as *locatio vel conductio*, but as *quidam honorarium*; not as a salary or hire, but as a mere gratuity which a counsellor cannot demand without doing wrong to his reputation' (8 Bl. Com. 28).

#### "3. In Pennsylvania distinction between attorney and counsel, as to claim for fees, abolished.

"Considering that the law as laid down in this passage of *Blackstone* was brought by our ancestors with them when they emigrated from England, and had not since been altered, the Supreme Court of Pennsylvania at one time held that an action could not be supported by a gentleman of the bar against his client, for advice and services in the trial of a cause, over and above the attorney's fees allowed by act of assembly (*Mooney v. Lloyd*, 5 S. and R. 412). This case has been since overruled (*Gray v. Breckenridge, &c.*, 2 Penrose and Watts, 75). 'It is,' says *Gibson, C. J.*, 'hard to imagine a principle of policy that would forbid compensation for services in a profession which is now as purely a calling as any mechanical art.'—'It is known to every member of the bar how narrow is the compass of his duties as an advocate. His most constant and effective efforts are made in the preparatory stages; and his agency in directing the process of execution is an invaluable one. In fact, a substantial if not a preponderating portion of professional business never finds its way to the ear of the judges at all; and there are many gentlemen in honourable and lucrative practice who

are seldom heard at the bar. They practise strictly as attorneys, and to apply the rule of the Roman law to them would be a perversion of it. Yet *Mooney v. Lloyd* would have done it; and the decision in *Gray v. Breckenridge*, by which it was overruled, seems to be as deeply seated in justice as it is in legal analogy' (*Foster v. Jack*, 4 Watts, 388).

"In Pennsylvania an attorney is not at liberty to vex his client with an action for each item of service the instant it is rendered; his right to sue is not necessarily postponed till judgment is had; nor does it then necessarily arise, especially where money is to be collected or the judgment is to be enforced by further proceedings. 'It may,' adds *Gibson, C. J.*, 'be his duty to expedite an execution and attend to the thousand and one matters usually connected with it' (Id. 389).

#### "4. Rule in New York.

"An interesting opinion upon the relation between the client and his advocate, as it was under the institutions of Rome, and as it is England, Scotland, and France, has been delivered in New York by Chancellor Walworth (26 Wend. 452). In that state the notion that fees of counsel are merely honorary, like those of a barrister or serjeant in England, is not recognised (*Stevens, &c., v. Adams*, 23 Wend. 57). 'Where,' says Chancellor Walworth, 'a party employs counsel and agrees to give him a specific allowance for his services, or to pay him what those services shall be reasonably worth,' if compensation be not made according to the agreement, the counsel has a legal right to sue and recover such compensation (*Adams v. Stephens, &c.*, 26 Wend. 457).

#### "5. Statutes of Virginia.

"Formerly the lawyers of this state were prohibited from taking, before the suits they were employed in were finally determined, any greater fees for their services than were expressed in the act of assembly (1 R. C. 1819, p. 270, ch. 76, § 14)a This act subjected to a penalty a lawyer taking greater fee or reward before he had performed the service or finished the suit (Id.). And it further provided that no lawyer, in a suit to be brought for his fees or services, should recover more than those fees, notwithstanding any agreement, contract, or obligation made or entered into by the party against whom such suit shall be brought, if such agreement, contract, or obligation shall have been entered into before the suits in which such fees shall have accrued, or services been rendered, were finally determined (Id. § 15). This was altered by the act of 1839, 40, p. 44, ch. 50, § 2; in accordance with which the Code provides as follows:

"'An attorney shall be entitled as a fee to the amount which the clerk is authorised to tax in the bill of costs, in any suit, or for any service as such attorney. But any contract made with an attorney for other or higher fees shall be valid and may be enforced, in like manner with any other contract. Code, p. 636, ch. 164, § 11."

### LAW OF COSTS.

OF REFERENCE AND AWARD — AWARD PARTLY IN FAVOUR OF PLAINTIFF AND PARTLY OF DEFENDANT.

By a judge's order, a cause and all matters in difference between the parties were referred to two arbitrators, and to such person as they should

appoint, in case they could not agree—the costs of the cause to abide the event of the action, and the costs of the reference and award to abide the event of the award. The arbitrators found all the issues joined in the action for the plaintiff, and that he was entitled to recover in such action the sum of £80 14s. 11d., and as to the matters in difference between the said parties other than those in the said action they found that there was due from the plaintiff to the defendant the sum of £6, and they directed that the defendant should pay the plaintiff the balance within ten days from the date of the award.

Upon a rule to review the master's decision disallowing the plaintiff's costs of the reference and award, *Cresswell, J.*, said—"The arbitrator has pronounced two distinct decisions—in favour of the plaintiff so far as the action is concerned,—in favour of the defendant as to the matters in difference. Neither party is entitled to the costs of the reference."—*Gribble v. Buchanan*, 18 Com. B. 691.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### ON THE LAW REFORMS OF LAST SESSION.

It has been our business and duty from week to week during every session of Parliament to notice the alterations in the law, either proposed or carried, and at the close of each session to sum up the results. As different counsel take various views of the same case, and as the profession cannot be too well informed of the nature and effect of recent enactments, it may not be inappropriate to notice the summary of the labours of Parliament in the last session, as recorded by the managing committee of the Metropolitan and Provincial Law Association in their 9th circular just issued. We propose, therefore, to make some extracts relating to the most prominent statutes that received the Royal Assent.

The committee observe that:—

"The acts which were passed affecting the practice of the law are not many in number, nor, with some exceptions, very important in their character.

"Among the more important Government measures which have ripened into law, may be mentioned the acts relating to Joint Stock Companies, Mercantile Law Amendment, County Courts Amendment, Leases and Sales of Settled Estates, and the General Police.

"By the *Joint Stock Companies Act, 1856*, seven or more persons, associated for any lawful purpose, except banking or insurance, may form themselves into an incorporated company, with, or without, limited liability; and if any number of persons exceeding twenty carry on business without being registered as a company under this act (unless they are authorised by private act, charter, or letters patent), each of them is separately liable for the whole debts of the partnership.

"The effect of registration confers on the company all the advantages of a body corporate.

"If companies of less than seven shareholders (either originally or by reduction), carry on business, for a period of six months, every shareholder becomes separately liable for the whole of the debts contracted, during the time business is so conducted.

"The business relating to winding up is divided between the Courts of Chancery and Bankruptcy, and the act contains a number of provisions on this point. Limited companies registered in England (except those within the jurisdiction of the Stamp Duties Court), are to be wound up in the Court of Bankruptcy, subject to such rules as the commissioners may make.

"Other companies are to be wound up in the Court of Chancery, under a new process to be formed by the Lord Chancellor. And a company may be wound up by the court, when a resolution for that object has been passed at a general meeting; when a company does not commence business within a year from its incorporation, or suspends its business for the same period; when the shareholders are reduced below seven; when the company cannot pay its debts (and a company is to be deemed unable to pay when a creditor for £50 or upwards has given a notice requiring payment, and the company has neglected for three weeks to pay, or to secure the debt); when a judgment, decree, or order, is returned unsatisfied; or when three-fourths of the capital of the company have been lost, or become unavailable (secs. 67, 68). There are circumstances, however, under which a company may be wound up voluntarily. These are, when the period fixed for the duration of the company has expired; or when any event happens, upon the occurrence of which it is provided by the constitution of the company that it is to be dissolved; or when a general meeting of the company has passed a resolution requiring a voluntary winding up (sec. 102).

"When a company is to be wound up, 'official liquidators,' payable by a per centage, are to be appointed by the court; their principal duties are to assist the court, and to take possession of all property, effects, and choses in action of the company, and to perform any other duties imposed by the court. They are empowered to bring or defend actions and suits; to carry on the business of the company; to sell real and personal property, moveable effects, and choses in action; to execute all deeds; to draw bills; and, generally, to do all things necessary for winding up the company, and distributing its assets. They are, also, authorised, in the performance of their duties, to engage the assistance of a solicitor who is to be paid such fees as the court may direct (secs. 88 to 91 inclusive).

"All commissioners in bankruptcy, and all county court judges (except the London commissioners, and the metropolitan county court judges), are to be commissioners for receiving evidence under the act; and every such commissioner is to have the same powers of summoning and examining witnesses, and requiring production and delivery of documents, and punishing defaults, and allowing costs, as the court which made the order for winding up possesses (sec. 101).

"On one portion of the act it is difficult to put a construction, namely, the provisions as to insurance companies.

"Section 2 enacts, 'That this act shall not apply to persons associated together for the purpose of banking or insurance.'

"Section 107 repeals the former joint stock acts of the 8 Vic. c. 110; 10 & 11 Vict. c. 78, and the 18 & 19 Vict. c. 138 (*Limited Liability Act, 1855*), but provides that 'such repeal shall not take effect with respect to any company completely registered under the said act of the eighth year of her present

Majesty, until such company has obtained registration under this act, as hereinafter-mentioned.

"Section 110 enacts, that 'every company completely registered under the said act of the eighth year of the reign of her present Majesty, c. 110, shall on or before the third day of November, 1856, and any other company duly constituted by law previously to the passing of this act, and consisting of seven or more shareholders, may, at any time hereafter, register itself as a company under this act, with or without limited liability, subject to this proviso, that no company shall be registered under this act as a limited company, unless either a certificate of complete registration with limited liability, under the "Limited Liability Act, 1855," has been obtained by it, or an assent to its being so registered has been given by three-fourths in number and value of such of its shareholders as may have been present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for that purpose.'

"Now it will be seen that the new act deprives new insurance companies of the benefit of the Joint Stock Companies Act (8 Vic. c. 110), for it repeals that act except as to companies completely registered under that act; and it provides no substitute, for it is expressly declared that the new act shall not apply to insurance companies. There is, therefore, no legal authority under which new companies for the purpose of insurance can now be formed, so as to have the legal incidents of a corporation, except by letters patent under the 1st Vic. c. 73, or by the troublesome and expensive process of obtaining a private act, or a charter from the Crown.

"A deed of arrangement may, indeed, be resorted to, but this would subject the members of the company to the liability of a private commercial speculation, every partner being severally responsible for the acts of his co-partners.

"And with respect to insurance companies already completely registered, there is a difference of opinion on the construction of the act. It is contended by some that 'every company' registered under the 8 Vic. c. 110, including insurance associations, must be registered in November next under the new act (19 & 20 Vic. c. 47); whilst others maintain that inasmuch as it is expressly declared that the act shall not apply to insurance companies, and because companies intended to be registered under it may be registered 'with or without limited liability,' and insurance companies *must* remain unlimited in liability, they cannot be registered under it. It is also maintained that as it is declared, 'that the repeal of the former acts shall not take effect with respect to any company completely registered under the said act of the 8th of her present Majesty until such company has obtained registration under this act,' insurance companies completely registered will continue effectually registered under the former act. The doubt, however, cannot be set at rest until the meeting of Parliament, or until the courts express an opinion on the subject.

"In June, 1853, a commission was appointed to inquire and ascertain how far the mercantile laws of the different parts of the United Kingdom might be advantageously assimilated. In 1855, the commissioners made a report, in which it is mentioned that the commissioners, in order to obtain information on the subject, had prepared a statement showing a considerable number of the differences between the

mercantile laws prevailing in different parts of the United Kingdom, and caused such statement to be printed and circulated amongst legal and mercantile men, requesting them to point out any other differences which might occur to them, and any practical inconvenience which they had known to arise from existing differences. The papers so circulated, and the answers received, are printed in an appendix to the report; and in order to present a connected view of the more important of those differences, a statement of them is also printed in another appendix to the report.

"The information collected under this commission has produced the act to amend the laws of England and Ireland, affecting trade and commerce, 19 & 20 Vic. c. 97. Its object is to do away with the inconvenience felt by persons engaged in trade, from the laws of England and Ireland differing from the laws of Scotland.

"It provides that, for the future, no judgment or execution against the goods of a debtor shall prejudice the title of a *bona fide* purchaser of such goods before their attachment, if the person had not notice that a writ had been delivered and remained unexecuted in the hands of the under-sheriff (sec. 1).

"In actions for breach of contract for the specific delivery of goods sold, the jury, if they find for the plaintiff, shall declare specifically what are the goods to which he is entitled, and what damages he has sustained; and power is given to the court to order the delivery, without giving the defendant the option of retaining the goods upon paying their value and the extra damages recovered (sec. 2).

"After the passing of the act, no special promise in writing, to be security for another party, shall be invalid from the fact that the consideration for such promise does not appear on the instrument or in writing; and no guarantee given to, or for, a firm, is to be binding after a change has taken place in one or more of the persons constituting the firm, unless an intention that such promise shall continue to be binding, shall appear (sec. 4).

"A surety who discharges a debt or liability, is to be entitled to the benefit of all securities which shall be held by the creditor in respect of such debt; and may call for assignment thereof (sec. 5).

"No acceptance of any bill of exchange, either inland or foreign, made after December, 1856, shall be binding on any person, unless the acceptance be in writing on such bill, or if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or his agent (sec. 6).

"With reference to claims for repairs done, or supplies furnished, to ships, every port in the United Kingdom, the islands of Guernsey, Man, Jersey, Alderney, and Sark, shall be deemed a home port (sec. 8).

"All actions on merchants' accounts shall be commenced within six years after the cause of action has arisen (sec. 9).

"No person is to be entitled to any additional time within which to sue, on account of his absence in foreign parts, or of imprisonment (sec. 10).

"This act does not, however, embrace all the alterations recommended by the commissioners, and Mr. Anderson, Q. C., one of the commissioners, alludes, in an appendix to the report, to many points in which our mercantile law might be simplified and improved.

"The next act to be noticed is that for amending



the county courts, which came into operation on the 1st of October, 1856.

"The act contains eighty-six sections, and several schedules.

"The fees to be payable, and the names of the judges who are to have increased salaries, are given in a schedule. Eighteen of the judges are to have £1,500 each, and four are to have £1,850. "Seven years' standing at the bar" is, of course, the qualification required for a deputy judge, and the clerk of a county court is hereafter to be called registrar, and no person can be registrar of more than one court. The power hitherto vested in the judge to issue a summons against a defendant residing out of the jurisdiction, is extended to the registrar (sec. 15).

"If the plaintiff and defendant reside or carry on business within separate districts of any of the metropolitan courts, the summons may be taken out either in the plaintiff's or defendant's district (sec. 18).

"The former county courts acts did not allow any action to be tried where a question of title was at issue; but by section 25, the judge has now power, by consent of the parties, to decide any claim of title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise.

"In any action of contract brought in the superior court, if the claim endorsed on the writ do not exceed £50, or be reduced by payment into court, set off, or otherwise, to a sum not exceeding £50, the judge of the superior court may, in his discretion order the cause to be tried in the county court (sec. 26).

"An alteration of consequence is made with respect to judgments by default. In any action for a debt exceeding £20, the plaintiff may require the defendant to give notice in writing of his intention to defend, or otherwise judgment will go by default without the plaintiff giving any proof of his claim (sec. 28).

"Where an action of contract is brought in one of her Majesty's superior courts, to recover a sum not exceeding £20, and the defendant in the action suffers judgment by default, the plaintiff shall recover no costs unless, upon an application made, such court or a judge of one of the superior courts shall otherwise direct (sec. 30).

"The judge of a county court may issue a warrant of *habeas corpus ad testificandum*.

"A defendant may object to a cause (if the claim be over £20 on contract, or £5 on tort) being tried in the county court, on giving security, to the satisfaction of the registrar, for the claim, and costs of trial in one of the superior courts not exceeding £150 (sec. 39).

"A scale of costs for debts or damages exceeding £20 has been framed and published under the provisions of sections 32 to 37.

"When a judgment does not exceed £20, the judge may order payment by instalments; in other cases the consent of the plaintiff is necessary (sec. 45).

"Section 49 provides, that if a judge of a superior court shall be satisfied that a party against whom judgment for an amount exceeding £20 (exclusive of costs) has been obtained in a county court, has no goods or chattels to satisfy the same, he may order a writ of *certiorari* to issue, to remove the judgment to one of the superior courts, and, when removed, it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a

judgment of such superior court; but no action shall be brought upon such judgment.

"Then follow clauses, as in previous acts, empowering landlords to recover possession of tenements, where the yearly rent or value of the property does not exceed £50, and where the term has expired, or been determined by notice.

"The act takes away the powers and responsibilities of the sheriff with respect to replevin-bonds and replevins; and the registrar of the county court of the district is empowered to issue all necessary process in relation thereto (sec. 63). An action of replevin may, however, be commenced in any superior court in the form applicable to personal actions therein; and if the replevisor shall wish to commence proceedings in any superior court, he shall, at the time of replevying, give security to the registrar, upon conditions enumerated in section 65. A defendant, however, has the power of removing an action of replevin by *certiorari* into the superior court, where a question of title is involved, or where the rent or damage in respect of a distress exceeds £20. An appeal is also given in actions of replevin and proceedings in interpleader, where the money claimed exceeds £20, and for the recovery of tenements where the yearly rent or value exceeds £20, and in all actions where the parties agree that the court shall have jurisdiction.

"The act then directs, where parties are required to give securities under the act, how such securities are to be given and enforced.

"Acknowledgments of deeds by married women may be received by the county court judges (sec. 73).

"The salaries of the judges are to be paid out of the consolidated fund, and the travelling expenses out of money voted by Parliament (secs. 80, 81).

"The registrars are to be paid by salaries on the following principle: the registrar of a court in which the plaintiffs entered do not exceed two hundred a year is to have £120 per annum; and where the plaintiffs exceed two hundred a year, the salaries are to be increased by £5 for every twenty-five additional plaintiffs up to one thousand plaintiffs, and then by £4 for every twenty-five additional plaintiffs up to six thousand, and such salaries shall be inclusive of all salaries to clerks and of all emoluments, except those receivable in proceedings in insolvency or protection; and in the courts in which the plaintiffs exceed six thousand, the salary is to be fixed by the commissioners of the Treasury, but in no case shall the net salary to be allowed exceed the maximum of £700 per annum (sec. 82).

"The object of the *Leases and Sales of Settled Estates* Act is to give to the Court of Chancery power, in certain cases, to authorise leases and sales of settled estates, where it is deemed that such leases or sales would be proper, and consistent with a due regard for the interests of all parties entitled under a settlement; the word "settlement" signifying any act of Parliament, deed, agreement, copy of court roll, will, or other instrument, under which any hereditaments stand limited to, or in trust for, any persons; and the term "settled estates" signifying all hereditaments of any tenure, and all estates or interests which are the subject of a settlement (sec. 1).

"Every such lease must take effect in possession, within the year after the making thereof, and may be for a term not exceeding twenty-one years for an agricultural or occupation lease; forty years for a mining lease, lease of water, or of rights or eas-

ments; and ninety-nine years for a building lease; or where the court shall be satisfied that it is the custom to grant longer terms, then for such terms as the court shall direct. On every lease the best rent is to be reserved; and where the lease is of any earth, coal, stone, or mineral, a certain portion of the rent reserved is to be set aside and invested (sec. 2).

"Every application to the court must be made with the consent of the tenant in tail under the settlement, where there is one, and he is of full age; and if there is more than one tenant in tail in succession, then the first of such tenants in tail; and all persons in existence, having any beneficial estate or interest under or by virtue of the settlement, prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child, prior to the estate of such tenant in tail; and, in every other case, the parties to consent shall be all the persons in existence having any beneficial estate or interest under the settlement, and also all trustees for any unborn child (sec. 1).

"Application to the court is to be by petition, preceded by notice, and the court cannot grant any application under this act where a similar application has been rejected by Parliament (secs. 19, 20, 21).

"All money to be received on any sale, or to be set aside out of the rent reserved on any lease, may be paid to trustees approved by the court, or into the Bank, to the account of the Accountant-General of the Court of Chancery, *ex parte* the applicant in the matter of this act; and in either case, such money is to be applied to one or more of the following purposes; viz.—The purchase or redemption of the land tax, or the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the several uses and trusts; or the purchase of other hereditaments, to be settled in the same manner as the hereditaments in respect of which the money was paid; or the payment to any person becoming absolutely entitled (sec. 23).

"The application of the money in manner aforesaid may, if the court shall so direct, be made by the trustees, without any application to the court, or otherwise, upon an order of the court upon the petition of the person who would be entitled to the possession, or the receipt of the rents and profits, if the money had been invested in the purchase of lands (sec. 24).

"Until the money can be applied, it is to be invested in exchequer bills, or in the three per cent. Consols, and the dividends paid to the parties entitled (sec. 25).

"The court is empowered to order that all costs incident to an application under this act shall be a charge on the hereditaments, and may direct that such costs shall be raised by sale or mortgage of a sufficient part of such hereditaments (sec. 29).

"Power is given to the Lord Chancellor, with the assistance of the equity judges, or of any three of them, as to proceedings in England, and to the Lord Chancellor of Ireland, with the assistance of the Irish Master of the Rolls, and of the Lord Justice of the Court of Appeal in Chancery, or of any two of them, so far as relates to proceedings in Ireland, to make rules and orders. Tenants for life of settled estates may grant leases for twenty-one years (sec. 32). Where a married woman applies to the court under the act, she must be examined apart from her husband; and no clause in any settlement

restraining anticipation is to prevent the court from exercising the powers of the act (sec. 37).

"The act comes into operation on the 1st of November, 1856.

"With reference to sections 19, 20, 21, and 25 of this act, it may be observed that the bill, as presented by the Lord Chancellor at the beginning of last session, prescribed various ways in which the monies realised by a sale might be applied, but did not extend to investing them in Consols. Nor did the bill provide for public notice being given of any intended application to the Court of Chancery under the act, nor for any other persons but those directly interested in the property, being heard in the Court of Chancery. Nor did the bill preclude those who had failed in an application to Parliament from renewing their attempt in the Court of Chancery. The committee, therefore, petitioned the House of Lords to have these points provided for, but unsuccessfully, and the bill was sent to the Commons without the suggested amendments being inserted.

"In the Commons, however, the efforts of the committee were attended with success, the amendments being moved by Mr. Hadfield, and carried.

## NOTES ON THE COMMON LAW PROCEDURE ACT, 1854.

### NEW TRIAL WHERE VERDICT UNDER £20.

THE 17 & 18 Vict. c. 125, s. 44, which provides that when a new trial is granted on the ground that the verdict was against evidence, the costs of the first trial shall abide the event, unless the court shall otherwise order, has not altered the rule upon which the courts have so many years acted, in refusing to grant a new trial on the ground of the verdict being against evidence, where the damages are under £20.

*Hawkins v. Alder*, 18 Com. B. 640.

## NOTES OF THE WEEK.

### THE NEW COMMON LAW COMMISSION.

THE QUEEN has been pleased to appoint the Right Hon. Lord Campbell, the Right Hon. Lord Wensleydale, Sir Edward Hall Alderson, Knt., Sir Cresswell Cresswell, Knt., the Right Hon. Sir John Somerset Pakington, Bart., the Right Honourable James Archibald Stuart Wortley, Sir Frederic Thesiger, Knt., John Wilson Patten, Esq., and Horatio Waddington, Esq., to be Her Majesty's Commissioners for inquiring into the present arrangements for transacting the Judicial Business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales.—From the *London Gazette* of 5th December.

Master Walton, of the Court of Exchequer, we are informed will be the secretary to the Commission.

### LAW PROMOTIONS AND APPOINTMENTS.

The Queen was this day (28th November) pleased to confer the honour of knighthood upon *Benjamin Chilley Campbell Pine*, Esq., barrister-at-law, Governor and Commander-in-Chief of Her Majesty's Forts and Settlements on the Gold Coast.

Her Majesty has also been pleased to confer the honour of knighthood upon *Henry Davison*, Esq., of

the Inner Temple, barrister-at-law.—From the *London Gazette* of 5th December.

Mr. Richard Wright, solicitor, has been appointed Registrar of the Brompton County Court.

Mr. Charles William Moore, solicitor, has been appointed Town Clerk of Tewkesbury, in the room of Mr. Joshua Thomas.

John Shapland Stock, Esq., has been appointed

Recorder of Exeter, in the room of Mr. Serjeant Kinglake, appointed Recorder of Bristol. Mr. Stock was called to the Bar by the Honourable Society of the Middle Temple on the 25th of June, 1850, and went the Western Circuit.

The Queen has been pleased to appoint Mr. Harding, Esq., to be Recorder of Natal.—From the *London Gazette* of 9th December.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

*In re Strong.* Dec. 8, 1856.

#### SETTLEMENT ON MARRIAGE OF INFANTS' ACT—CONSTRUCTION—INQUIRY INTO PROPRIETY OF MARRIAGE.

*Semble, that the 18 & 19 Vict. c. 43, s. 1, only imposes upon the court the duty of seeing into the propriety of the proposed settlement, and not of the marriage of an infant, although, under some circumstances, it may be necessary to inquire into the propriety of the marriage, in order to decide upon the propriety of the settlement.*

*The sanction of the court was given to a settlement, upon the production of an affidavit verifying counsel's statement, that the infant's friends were quite satisfied as to its being a proper marriage, both as regarded the age and circumstances of the parties.*

THIS petition was heard on the 6th instant by V. C. Stuart, to enable Miss Catherine Strong, an infant, to make a settlement of her property upon her marriage, under the 18 & 19 Vict. c. 43, s. 1, and upon which his Honor had directed an inquiry into the propriety of the marriage.

By the section, it is enacted that "it shall be lawful for every infant, upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement, or contract for a settlement, of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy, and every conveyance, appointment, and assignment of such real or personal estate or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the said court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years."

*Bagshawe*, in support, referred to *In re Dalton* (6 De G. M'N. and G. 20), where the Lord Chancellor had held that the statute only imposed upon the court the duty of seeing into the propriety of the settlement, and not of the marriage, although, under some circumstances, the court had a right to do so, where it might be necessary to inquire into the propriety of the settlement, in order to decide the question whether the settlement was proper. Counsel also stated that, in the present case, the infant's friends

were quite satisfied as to the propriety of the marriage, both as to the age and circumstances of the parties.

The Court, therefore, without deciding as to the necessity of inquiring into the propriety of the marriage, said that, upon production of an affidavit verifying the statement of counsel, an order would be made sanctioning the proposed settlement.

### Master of the Rolls.

*Worthington v. McCraw.* Dec. 6, 1856.

#### TRUSTEE—LIABILITY FOR BREACH OF TRUST—ADVANCEMENT OF CONTINGENT LEGATEE.

*A testator gave a sum of money in trust for his son for life, and afterwards to his grandson, upon his attaining twenty-one years, with remainders over on his death under that age. It appeared that the trustee had advanced money to article the grandson during the father's lifetime, although there was no such power in the will: Held, that upon the grandson attaining twenty-one, and his interest vesting, the trustee, who had acted bona fide, was not liable for the breach of trust.*

A TESTATOR, by his will, gave a sum of money in trust for his son for life, and upon his death, to his (the testator's) grandson upon his attaining the age of twenty-one years, with remainders over upon his death before attaining that age, as therein mentioned. It appeared that the trustee had, during the lifetime of the tenant for life, advanced a sum of money to article the grandson, who was then still a minor. The grandson had since attained twenty-one, and his interest had thereupon become vested, and it was now sought to render the trustee liable, as for a breach of trust, for such advancement.

*Cur. ad. vok.*

The Master of the Rolls said that, although the trustee might have become liable to the parties entitled upon the grandson's death under twenty-one, yet, as between such grandson and the trustee, who had acted *bona fide*, he could not be held liable for a breach of trust.

### Vice-Chancellor Kindersley.

*Heap v. Jones.* Dec. 6, 1856.

#### FORECLOSURE SUIT—TRUSTEE OF MORTGAGED PREMISES—DISCLAIMER—COSTS.

*In a foreclosure suit, the trustee appointed by the mortgagor of the mortgaged premises was made*

a defendant, and in his answer he stated that he had never accepted, nor acted in, the trust, and he thereby disclaimed: Held, that he was entitled to his costs as between party and party.

It appeared in this foreclosure suit that the trustee appointed by the mortgagor of the mortgaged premises had been made a defendant, and that by his answer he stated he had never accepted, nor acted in, the trust, and by his answer he disclaimed. The case now on upon motion for a decree.

*Renshaw* for the mortgagee; *Hall* for the other parties.

The Vice-Chancellor made the decree as sought, and said that although the plaintiff was obliged to bring the trustee before the court, yet as by his answer and disclaimer it must be assumed he was not a trustee, and therefore not a proper party in reality, he was entitled to his costs as between party and party.

### Vice-Chancellor Wood.

*Dale v. Atkinson.* Dec. 5, 1856.

WILL—CONSTRUCTION—NEPHEWS RESIDING IN THIS COUNTRY—SAILOR.

A testator gave certain property among all his nephews and nieces residing at the time of his death in this country. It appeared that the plaintiff was one of the nephews, and had been apprenticed to the merchant service, but he always returned to this country when not at sea, and occasionally went to Ireland where his wife's family resided. On the day of the testator's death he was in Ireland assisting in unloading his vessel, and was shortly afterwards discharged. There were other nephews in North America and in India: Held, that the plaintiff was entitled to a share in the bequest.

The testator by his will gave and bequeathed certain property among all his nephews and nieces residing at the time of his death in this country. It appeared that the plaintiff, who was a nephew, was born in Durham, and afterwards apprenticed in the merchant service, but that when not at sea he always returned to Durham or went to Sligo in Ireland where his wife's family resided. On the day of the testator's death, the plaintiff was in Belfast harbour assisting in unloading his ship, and he was shortly afterwards discharged. There were other nephews living in North America and in India.

*W. H. Bennet and Hemings* for the different parties.

The Vice-Chancellor said it appeared that the plaintiff had never abandoned his home in Durham where he generally returned, and that therefore, although the case was not free from doubt, he must be held to be entitled to share in the bequest.

*Stebbing v. Atlee.* Dec. 6, 1856.

CROSS-EXAMINATION OF DEFENDANT ON AFFIDAVIT AFTER DECREE—SUBPENA TO ATTEND EXAMINER.

Held, that in order to obtain the cross-examination of a defendant upon her affidavit, after a decree to take accounts, a subpoena ad testificandum must be served.

Section 31 of the 15 & 16 Vict. c. 86, does not apply to a case after decree.

No special order of the judge is required to compel the attendance of a witness summoned to attend in chambers before the examiner.

In this case, where a decree had been made to take the accounts, it was sought to cross-examine one of the defendants who had made an affidavit, and a summons was taken out for her attendance at chambers. She attended, but was not cross-examined, and an appointment was then obtained, of which she received notice, to attend before the examiner. She attended accordingly, and accepted £1, which was tendered for her expenses, but under the advice of counsel she refused to be sworn, on the ground that she had not been served with a subpoena. The examiner, Mr. Otter, now referred the question for the decision of the Court.

*W. H. Terrell*, for the plaintiff, referred to the 15 & 16 Vict. c. 86, s. 38, which enacts "that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of the Lord Chancellor, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally before the examiner, and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed; and such witness shall be bound to attend before such examiner to be so cross-examined and re-examined, upon receiving due and proper notice, and payment of his reasonable expenses, in like manner as if he had been duly served with a writ of subpoena ad testificandum before such examiner; and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively, in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be deemed costs in the cause of such parties respectively, unless the Court shall think fit otherwise to direct;" and to section 41, which provides that "in cases where it shall be necessary for any party to any cause depending in the said court to go into evidence subsequently to the hearing of such cause, such evidence shall be taken as nearly as may be in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing."

*Fooks* contra on the ground that a subpoena was required, and also that there was no order or direction from the judge.

The Vice-Chancellor said that if the witness required it she was entitled to be served with a subpoena as s. 38 did not apply to a case after decree. On the question whether any special direction from the judge

\* Section 40 enacts that "any party in any cause or matter depending in the said court may by a writ of subpoena ad testificandum or duces tecum, require the attendance of any witness before an examiner of the said court, or before an examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined: Provided always that the Court shall always have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the cause."

was necessary for sending a witness who had been summoned to attend in chambers before the examiner, it would be putting the parties to most unnecessary expense to hold that such was required, nor did s. 30† of the 15 & 16 Vict. c. 80, giving to the chief clerks the jurisdiction of the Masters in Chancery control the power of the examiner to take the evidence.

*Girdlestone v. Creed.* Dec. 8, 1866.

CHARITABLE BEQUEST FOR BUILDING CHURCH—  
MORTMAIN ACT—INQUIRIES.

*A testatrix, who interested herself in collecting subscriptions for building a church at S., in Norfolk, by her will gave the residue of her property for that purpose, with a gift over, in case the bequest should be held void under the Mortmain Act (9 Geo. 2, c. 36). It was so held void, except as to £500, allowed by the 43 Geo. 3, c. 108, to be appropriated for such purposes; and this amount was carried to a separate account, and inquiries were directed for carrying out the objects of the testatrix. The Master found that a piece of land could be purchased at S., for £100, and that a*

*party interested in the bequest being declared void would give £200, and that a chapel might be built for £150: Held, that, under these circumstances, the money would be continued to the separate account—the 1st Jan., 1858, to be fixed, and until the interval, the land must be secured, and the contracts entered into for building the church.*

It appeared that the testatrix in this administration suit had interested herself in collecting subscriptions for building a church at Stowbridge, in Norfolk, and that, on her death, she gave the residue of her property to effect that object, with a gift over, in the event of the bequest being held void under the Mortmain Act, 9 Geo. 2, c. 36. The gift had been held void, except as to £500, allowed by the 43 Geo. 3, c. 108, to be appropriated for building a church, and this sum had been carried to a separate account. Upon reference to the master, he had found that a piece of land could be obtained at Stowbridge for £100, and that a person interested in the bequest being declared void would give £200, and that a chapel might be built for £150. The case now came on upon further directions.

*Fleming* for the executors; *Selwyn* for the residuary legatee; *Wickens* for the Attorney-General; *Eddis* for another party.

The Vice-Chancellor said that the master had found that it was possible to carry out the scheme of the testatrix, and that the matter was in progress. The money would, therefore, be still continued to the separate account; but January 1, 1858, would be fixed, when it must be shown that the land had been secured, and contracts entered into for building the church.

† "Each chief clerk shall, for the purpose of any proceedings directed by the Master of the Rolls or any Vice-Chancellor to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments, other than acknowledgments by married women, to receive affirmations, and, when so directed by the judge to whose court he is attached, to examine parties and witnesses either upon interrogatories or *videlicet*, as such judge shall direct."

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### Privy Council Appeals.

#### ANNULLING PURCHASE.

See *British Guiana*.

#### APPEAL.

1. *Restoring after dismissal—Recognizance—Sudder Court India.*—Appeal from the Sudder Court in India, which stood dismissed under Rule 5 of the Order in Council of the 13th of June, 1853, for want of effectual prosecution restored, as the appellant was in ignorance of the existence of the new rules, the Sudder Court having served the appellant (after the interposition of the appeal) with notice that two years was allowed after the arrival of the transcript in England for prosecuting the appeal.

Where Government securities for the due prosecution of the appeal and costs were deposited in the registry of the Sudder Court, the judicial committee in restoring the appeal dispensed with the usual recognizance in England. *Soto Luchmeechund v. Soto Zorawur Mull*, 9 Moore, P. C. 351.

2. *Leave to, obtained ex parte—Dismissing—Costs.*

—If leave to appeal be obtained *ex parte*, the respondent may, as a matter of course, present a counter petition to dismiss.

Where an appeal had been granted *ex parte* upon an allegation unfounded in fact, the judicial committee refused to hear the case, and dismissed the appeal with costs. *Sibnarain Ghose v. Hulodhar Doss*, 9 Moore, P. C. 354.

#### BOND.

See *Marriage settlement*.

#### BRITISH GUIANA.

*Purchase at execution sale—Annulling on petition.*—A. purchased, at an execution sale in British Guiana certain real estates, and having paid the purchase money into the registry of the supreme court, was put into possession by the Provost Marshal, but A., being unable to get a transport of the estates from the supreme court, as no title could be given, petitioned the supreme court for annulment of the sale, and return of the purchase money.

The supreme court refused to make any order on the ground that admitting that an execution sale

could be annulled, the purchaser's remedy was by petition to the sovereign for relief *restitutio in integrum* with *committimus* to the court.

Upon appeal, held by the judicial committee that as it was a mere question of the mode of giving relief to which it was not denied the purchaser was entitled, it was competent to give such upon petition to the court, and decreed annulment of the execution sale, and return of the purchase money to the purchaser; the rents and profits received by the purchaser while in possession to be set-off against interest on the purchase-money, as well as for money expended on improvements and for the costs. *Forte v. Beete and others*, 9 Moore, P. C. 386.

## COSTS.

See *Appeal*, 2.

## CROWN, PREROGATIVE OF.

See *Jersey*.

## DOMICILE.

*How new domicile acquired—Animus revertendi.*—A testator whose *domicilium originis* was Ireland, where he inherited considerable estates, abandoned such, and by a long residence in England acquired an English domicile. In the year 1836, he sold his house and furniture and broke up his establishment in England, and went to reside in France, where he bought and furnished a house in which he resided permanently (cohabiting with a French woman) to the period of his death in 1849, with the exception only of occasional visits of short duration to England for purposes of business relating to his estates in Ireland, and his property in the English funds.

Held, under such circumstances, that the testator's domicile was French, and was not affected by his having expressed an intention to return to England in an event which never happened, or of his having on one occasion, when in England, executed a will according to the English form and law, or from the circumstance that the bulk of his property at his death was in the English funds. *Anderson v. Laneville*, 9 Moore, P. C. 325.

## FORECLOSURE.

See *Isle of Man*.

## ISLE OF MAN.

*Mortgage — Redemption — Foreclosure — Quarter lands and intacks.*—Exposition of the tenure of quarter lands and intacks in the Isle of Man of the nature of copyhold.

By a statute of the Isle of Man passed in 1835, intitled "An Act to amend the Law relating to Mortgages," so much of the Act of Settlement of 1703—4 as limited the redemption of mortgages to twenty-one years was repealed, and by section 2 it was enacted that if the mortgage was not discharged at the end of twenty-one years from the date of the mortgage, it should be lawful for the mortgagee to sue out judgment, or execution, and cause the mortgaged premises to be sold to satisfy the mortgage, &c.

Held by the Judicial Committee—

First—That there could be no foreclosure of a mortgage of copyholds of the tenure of quarter lands, since the passing of that statute.

Second—That possession by the mortgagee of the mortgaged premises for twenty-one years could not

affect the right of redemption of the mortgagor; for as long as the mortgage subsisted it was redeemable by the mortgagor; the remedy left to the mortgagee being the right to sell the mortgaged premises after twenty-one years had elapsed from the date of the mortgage.

In 1817 A. mortgaged copyhold lands, of the nature of quarter lands, to B., who afterwards, in 1820, entered into possession. In 1824 the mortgage money not having been paid the lands were sold under an order of the Court of Chancery in the island, and B. became the purchaser. In 1852 A.'s representative filed a bill for redemption of the mortgage premises, which had been in possession of B. or those claiming under him since 1820, and for an account. The defence was—first, a denial of the plaintiff's title; and second, that the remedy was barred by the possession of the mortgagee for twenty-one years without accounting. The Court of Chancery in the island rejected this defence, and decreed redemption and account. Upon appeal, such decree affirmed.

*Christian v. Goldie* (2 Moore's P. C. cases, 226) observed upon.—*Birnie v. Caystile*, 9 Moore, P. C. 303, 304.

## JAMAICA.

See *Marriage settlement*.

## JERSEY.

*Originating laws for—Prerogative of the Crown.*—Three Orders of the Queen in Council, addressed to the Lieutenant Governor of the island of Jersey, and directed by the Secretary of State for the Home Department to be registered in the island, to give them the force of law—upon petitions of the states of Jersey, and by numerous inhabitants of the island, recalled; and certain acts passed by the states of Jersey, and proposed to be substituted for the Orders in Council, by the advice of a Committee of Her Majesty's Privy Council, confirmed.

Whether the Crown, by force of the prerogative, can, by Orders in Council, without the concurrence of the states of Jersey, originate laws for Jersey, or, whether an exclusive right of originating all laws for that island resides alone in the states. *Quere. In re the States of Jersey*, 9 Moore, P. C. 185.

## JUDICIAL COMMITTEE.

See *Will*.

## JURISDICTION.

See *Will*.

## MARRIAGE SETTLEMENT.

*Pursuant to bond—Mortgage—Cattle and stock—Jamaica.*—A., by bond, in consideration and contemplation of marriage, bound himself in a certain sum, for the purposes of his intended marriage settlement, to mortgage certain estates "and properties, and the lands thereto belonging, and their respective appurtenances," in the island of Jamaica, of which he was seised in fee, and to raise a certain sum by way of settlement. By a mortgage by way of settlement, in pursuance of such bond, A. mortgaged, *inter alia*, the said estates, and penna, and appurtenances, and "all and every the cattle, stock, and plantation implements."

Held (reversing the decree of the Court of Chan-

cory in Jamaica), that cattle and stock upon the estate and pennis were not included in the bond, and that, though the mortgage deed, made in pursuance of such bond, was by way of marriage settlement, yet it could not enlarge the provisions of the bond.

Cattle and stock upon a plantation or pennis, in Jamaica, are, by the law of the island, personal estate, and not affixed to the freehold.

The cases of *Lushington v. Sewell* (1 Sim. 435) and *Stewart v. Garnett* (1 Sim. 398), observed upon, and distinguished as relating to devises by will.—*Turner v. Barclay*, 9 Moore, P. C. 264.

#### MORTGAGE.

See *Isle of Man*; *Marriage settlement*.

#### NEGLIGENCE.

See *Steamer*.

#### PILOT.

See *Steamer*.

#### RECOGNIZANCE.

See *Appeal*, 1.

#### REDEMPTION.

See *Isle of Man*.

#### RESTORING APPEAL.

See *Appeal*, 1.

#### REVOCATION OF WILL.

See *Will*.

#### SHIPOWNERS' LIABILITY.

See *Steamer*.

#### STEAMER.

*Damage by sinking a barge—Licensed pilot—Negligence—Excessive speed—Owner's liability—City bye-laws.*—Damage by sinking a barge by a steamer causing a swell in the river Thames.

A large steamer in the charge of a licensed pilot, in proceeding up the Pool at nearly high tide, and at a speed dangerous to small craft, caused such a swell that a barge laden with coals was sunk.

Upon appeal, *held* (affirming the decree of the Admiralty Court)—

First, that upon the evidence, no blame or negligence was attributable to the barge.

Second, that the steamer was to blame, as the swell which sunk the barge was attributable to the speed at which she was going.

Third, that the steamer was to blame: (1) in not having kept a good look-out, as she might, and ought, to have seen the swell and the barge in time to have avoided the accident; and (2) that the pilot was solely to blame in not checking the speed or stopping the steamer.

Fourth, that as there was joint blame in the master and crew and the pilot, the owners were not exempted from liability for damage by the statute 6 Geo. 4, c. 125, s. 55, by reason of having a licensed pilot on board.

*Quære*.—Whether the rules and bye-laws passed by the Corporation of the City of London on the 29th of September, 1845, regulating the speed of vessels,

are good by the local act 7 & 8 Geo. 4, c. 75.—*The Netherlands Steamboat Co. v. Styles* (the *Batavier*), 9 Moore, P. C. 286, 287.

#### SUDDER COURT, INDIA.

See *Appeal*, 1.

#### WILL.

*Revocation—Subsequent will forthcoming—Jurisdiction of Judicial Committee.*—A testator executed a will in 1825, which was found uncancelled at his death, which event took place in 1853. In 1852, he executed another testamentary paper, the contents of which were wholly unknown, except the circumstance of the paper commencing with the words, "This is the last will and testament." This latter instrument was not forthcoming at his death, but there was no evidence of its destruction. The Prerogative Court held that the instrument executed in 1852 was not to be considered as a codicil, but as a substantive will, which operated as a revocation of the prior will of 1825, and that under the Statute of Wills, 1 Vict. c. 26, s. 22, the deceased must be considered to have died intestate, as the former will was not revived by the destruction of the latter.

Upon Appeal; *Held* by the Judicial Committee (reversing such sentence and decreeing probate to the will of 1825)—

First—That the *onus probandi* lies upon the party setting up the subsequent instrument as a revocation of the former will.

Second—That to establish a revocation of a former will relating to personality, by a subsequent testamentary paper not forthcoming, by parol evidence of execution only in the absence of any draft or instructions for such instrument, such evidence must be strong and conclusive as to its contents.

Third—That the mere fact of such an instrument commencing with the words "This is my last will and testament" does not render it a revocatory instrument; as those words do not necessarily import that such instrument contained a different disposition of the property; and that to make it operate as a revocation of a former will, it must be proved that the contents of the latter instrument were different from the former.

Fourth—That a subsequent will (the contents of which were unknown) having remained in the custody of the deceased and not forthcoming, the presumption of law was, that it was destroyed by him *animo revocandi* and did not revoke a prior will uncancelled.

Observations on the report of the case of *Moore v. Moore*, 1 Phill. 875, 406.

Subsequent to the Order in Council made upon the appeal reversing the sentence of the Prerogative Court a will dated March, 1851, was discovered, and application was made to the Judicial Committee for probate. Such application refused, as the original suit being concluded the jurisdiction of the Judicial Committee was exhausted; but the Committee intimated that if a petition was presented to her Majesty to refer the matter specially to them they would entertain the application.

Upon such petition being presented and referred the Committee revoked the probate of the will of 1825, and granted probate of the will of 1851. *Cutton v. Gilbert*, 9 Moore, P. C. 131.

Cases cited in the judgment: *Holyar v. Holyar*, 1 Lee. 511; *Moore v. Moore*, 1 Phill. 375; *Passcy v. Remington*, 1 Phill. 439; *Pleanty v. West*, 1 Robert. 364; *Henfrey v. Henfrey*, 2 Curt. 468; 4 Moore, P. C. 28; *Stoddart v. Grant*, 1 Macq. 171.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, DECEMBER 20, 1856.

### THE SOLICITORS' JOURNAL AND REPORTER.

RIVAL PERIODICALS, REPORTERS, AND  
AUTHORS.

WE apprehend it is far too late in the march of free-trade to re-establish any kind of monopoly, or to oppose the most free competition, whether in law reporting, or authorship, or in the publication of legal periodicals or serials. It is not long ago since there were rival reporters in all the common law courts, and in some of the equity. There has also been a superabundant rivalry amongst professional authors, even on the self-same subjects, so as to perplex both the practitioner and the student in the choice he should make for the shelves of his library. The ground taken by men of the greatest eminence in the most important branches of the law has been ambitiously invaded by their juniors, and sometimes with success.

It may be deemed great presumption to enter a well-occupied field, but we never heard of an appeal from the previous writers addressed to the profession calling upon them to resist the invaders! What would be said, on the appearance of an improved edition of Blackstone's Commentaries by a new editor, if the previous editors were to send circulars to every lawyer remonstrating against the interloper?

Our learned contemporary the *Law Times*, however, appears to entertain a different opinion. Having thirteen years ago, at a time when there were three weekly law publications existing, succeeded in establishing a fourth, he conceives that he has acquired a strong hold upon professional gratitude, and ought not to be disturbed in his career. He cannot tolerate the retirement of one of the three previous works, and the substitution of another. How far is this claim to a species of vested interest to be carried? May we conjecture a restraint upon the number of members called within the bar? Whilst so many able men are not fully employed, why should the Lord Chancellor bestow silk gowns on so many of the outer bar? Against this unkindness there has hitherto been no remonstrance; but if the recent practice be adopted, we may

expect that free competition will hereafter be restrained at the bar as well as in the walks of legal literature. ♦

It is rather remarkable that the *Law Times* should shift its ground from its first outburst on the 6th to another position on the 13th instant. At first it assumed that the SOLICITORS' JOURNAL was established because the *Law Times* advocated the interest of the whole profession, and the solicitors as a part, whilst the new journal would support the second branch of the profession only, and "separate" it from the general body. We infer that this ground was untenable, and now our contemporary asserts a new and startling reason, but which is altogether untrue. It affirms that the proposed new journal originates with "Six Agency Houses," and that their object is to concentrate legal business in the metropolis for their own personal advantage. This is, in fact, renewing, in a most offensive form, the imputation so often cast by the *Law Times* upon the London solicitors for selfishly attending to their own interests in opposition to their brethren in the country. In order that there may be no mistake in stating this additional ground of complaint against the *Law Times*, and which would alone justify the commencement of a new work, we shall quote from several of the last week's pages of the *Law Times* the objectionable passages which are there reiterated:—

"We present to-day the first supplement containing the response of the profession to the attack made upon the *Law Times* by the six agency houses."

"Let us assure the half-dozen agency houses who are trying to get rid of the *Law Times*, and to substitute a journal under their own control, to maintain their own interest, that the *Law Times* has not opposed or supported any measures from a desire to injure their interests."

"Let us tell the agency houses that have made this attempt to deprive the rest of the solicitors of their independent advocate and organ, that we have been importuned to carry out against them the self-same endeavour which they are now making against us, and by the same means. At this moment there would have been existing a limited liability company of the country solicitors for the purpose of conducting their own agency business in London, if the *Law Times* had consented to give it encouragement and assistance."

"The Prospectus of a Limited Liability Joint Stock



Company formed by members of a few of the London agency houses, for the purpose of establishing a journal in opposition to the *Law Times* for obvious personal purposes, but on the pretended plea that it has not done its duty to the solicitors and supported their interests." &c.

A few words will put these statements of the *Law Times* out of court.

The Prospectus, which will be found in a subsequent page, will show that instead of the SOLICITORS' JOURNAL having originated with "Six Agency Houses," there are sixteen directors, comprising nine town and seven country solicitors of the first eminence; and that of the nine town directors there are only three belonging to Agency Houses. The London directors (except one) are members either of the council of the Incorporated Law Society or of the managing committee of the Metropolitan and Provincial Law Association. The names of the Provincial Directors, also, carry with them a recommendation that will ensure the success of the undertaking.\*

Then, we would ask, to what end has the appeal been made to the subscribers of the *Law Times*? The establishment of the new journal cannot be prevented. Supposing the whole of the present subscribers of the *Law Times* should continue, there are sufficient left of the 10,000 solicitors in England to support the SOLICITORS' JOURNAL, besides other channels of circulation which may fairly be reckoned upon. We observe that about 700 provincial solicitors, out of 7,000, and 80 metropolitan solicitors, out of 3,000, have sent in their adhesion to the *Law Times*; but we understand that the larger part of these respondents had not seen the Prospectus of the SOLICITORS' JOURNAL, and were not aware under what patronage it was coming forth.

The *Law Times*, however, appears to rest its claim upon a kind of title said to be gained by thirteen years' useful labour. Is it too presumptuous on the part of the LEGAL OBSERVER to say that its editor and contributors had for the like number of years prior to the existence of the *Law Times* laboured anxiously in the same cause, and yet the projectors of the *Law Times* felt no compunction in using their exertions to rival or displace a journal well known as the organ of the attorneys, and which was established by themselves.

We announced some time ago that we contemplated a new and enlarged series of "THE LEGAL OBSERVER AND SOLICITORS' JOURNAL," with several additions and improvements, now projected in the journal which the *Law Times* denounces as an encroachment on its domain. May we venture to ask our learned contemporary whether—having "stolen a march on us" thirteen years

ago—he could have reasonably objected to our embarking a few thousand pounds for the purpose of enlisting new contributors of eminent literary talent, and reporters of great learning and accuracy, in order to "turn the tables" upon our old rival.

Well, then, if the proprietor and editor of the LEGAL OBSERVER might start a new and improved series, why should they not (instead of increasing their labour and advancing their capital) give place to a numerous body of their professional friends and brethren, who have formed a large joint stock fund for the purpose of accomplishing what would be difficult in the hands of a few individuals, but easy of attainment by a numerous association. Moreover, this very project of uniting a large body of solicitors practising in various parts of the empire has been contemplated for years, but could only be effectually brought to bear under the "Limited Liability Act," to which act our contemporary has had an instinctive aversion, though perhaps he did not actually foresee that the provisions of the statute will be highly beneficial both to the public and the profession.

Supposing, however, that the editor of the *Law Times* had always ably and consistently rendered the services which he states, he surely has no general retainer from the solicitors. He did not, like the LEGAL OBSERVER, commence the work at the request of leading solicitors or any known body of the profession. The project of the *Law Times* was an individual speculation by a gentleman just then called or about to be called to the bar. He did not devote himself exclusively to the special advocacy of the solicitors. He claims, indeed, to be the patron of the whole profession in all its ranks. Nor was he content with the success of his exertions in establishing the *Law Times*. He embarked in various other legal and literary speculations, almost too numerous to mention, of which an account was given a few years ago in some of the periodical publications.\*

There can, of course, be no objection to the pursuit of these multifarious objects, which are no doubt found to be very profitable; yet it may be conjectured that no amount of industry or talent can be equal to all the exigencies of these various and important speculations; and we cannot wonder, therefore, that the solicitors should desire to have an editor of their own, mainly at least, if not exclusively, devoted to their cause. It cannot be deemed unreasonable that they should prefer selecting their own writers to state their views through the medium of the press

\* All the shares forming the capital of the Company have been taken by solicitors whose influence is deemed very valuable.

\* Amongst them were the Verulam publications; various Treatises; the Critic, a family literary journal; and a large Collection of Forms of Proceedings for the execution of all kinds of Acts of Parliament. To which were added an Executorship and Trustee Company, and other joint-stock projects.

—writers who are not engaged in such extensive speculations.

Further, it may be proper for the solicitors to consider that the editor of the *Law Times*, as a *barrister*, will naturally support his "own order," and when the interests of the two branches conflict that he will favour his own brethren. Indeed, the argument urged last week in favour of the *Law Times* was that it maintained that the interest of the attorneys consisted *not* in taking an independent position of their own, but that they should follow in the wake of the higher grade to which the editor of the *Law Times* belongs. Be this as it may, it is evident that a large and influential number of solicitors are of opinion that they are not truly or sufficiently represented in the *Law Times*—that the writers in that journal are imperfectly acquainted with what the attorneys consider their true interests, and do not properly or consistently support their objects.

On the whole, it is palpable that there can be no possible claim to call on the attorneys and solicitors, either in town or country, to send in their adhesion to the *Law Times* in preference to the *SOLICITORS' JOURNAL*. Time will show which of the two works is the better suited to supply the wants, and entitled to the support, of that branch of the profession for which the *SOLICITORS' JOURNAL* is principally intended.

We have to add, that in truth the *SOLICITORS' JOURNAL*, in its new form, originated at Birmingham during the meetings of the Metropolitan and Provincial Law Association which took place there in the month of October, 1855; and the plan was matured at Liverpool in October last. So much for the assertion that the work has originated with a few London Agency Houses, and for the purpose of promoting their personal interests.

## THE LAW NEWSPAPER COMPANY LIMITED.

The object of this Company is to publish a New Weekly Journal, to be called the "*SOLICITORS' JOURNAL AND REPORTER*," which will be especially devoted to the interests of Solicitors.

It has long been a subject of regret to leading Solicitors throughout the kingdom that their branch of the Profession has never been adequately represented by any organ of the press. The only journal, at the present time, which distinctively represents the Solicitors of the United Kingdom is the *LEGAL OBSERVER*, a periodical which has always maintained a high character, and besides being of considerable value in other respects, has accurately communicated to the Profession many of the

proceedings of the Incorporated Law Society. Several circumstances, however, which will not affect the new publication, have prevented the *LEGAL OBSERVER* from occupying the position which ought to be held by the organ of the Solicitors of England and Wales, and have tended to restrict its circulation, particularly in the provinces.

The introduction of the principle of Limited Liability into the Law of Joint Stock Companies will enable the Directors to carry out the present undertaking without any indefinite risk being incurred by those who engage in it.

The Directors of the present Company have arranged to purchase the copyright of the *LEGAL OBSERVER*; and it will be their object to establish a new paper of a size increased sufficiently to meet the wants of the Profession: while they are supported by adequate capital and a widely-extended list of Shareholders, so as to secure at once a remunerative circulation.

The *SOLICITORS' JOURNAL* will contain a well-digested summary of the legal news of the week; and will devote some portion of its space to literary articles, reviews, and notices of new books, and the proceedings of some of the principal societies connected with science and literature; but will carefully avoid party politics and theology.

The *SOLICITORS' JOURNAL* will be independent of both the Incorporated Law Society and the Metropolitan and Provincial Law Association; but will support them, as well as the various Provincial Law Societies, in their exertions for the improvement of the position of Solicitors, and the protection of their professional rights, and will report their proceedings.

It has been considered essential to present the Subscribers with a good series of reports adapted for practical use. The difficulties which would otherwise have attended the attainment of this object have been happily met by an arrangement made by the Directors with the Proprietors of the *Weekly Reporter*, by which the current number of that publication will form a portion of the weekly issue of the new paper. The *Weekly Reporter* will continue its own independent sale, and its Proprietors, Editors, and Reporters will not be responsible for the contents of the *SOLICITORS' JOURNAL*.

The *Weekly Reporter* gives, with regularity, concise and satisfactory reports of cases both in Law and Equity up to the Wednesday in each week in which it is published. This is a feature not possessed by any other series of reports, and is one of peculiar value to Solicitors, to whom it is of the first importance to be informed of new points as soon as decided. Each volume also contains a digest of all the cases reported during the year in all recognised series of Reports.

The *Weekly Reporter* has been published for four years. It has obtained an established

character, is cited and received in Court as an authority, and is frequently referred to in new works.

Whilst the SOLICITORS' JOURNAL will be useful to the Solicitors of the United Kingdom and in the Colonies, numbering probably 20,000, it is anticipated that the work will also be acceptable to many Members of Parliament, Magistrates, and official persons connected with the administration of the Law. Considering, also, the deep interest taken by the Public in the administration of justice, it is expected that the SOLICITORS' JOURNAL will find a place in all public Libraries and Newsrooms.

It will especially comprise the following topics, selected with reference to the Profession :—

New Statutes and Bills in Parliament.  
Parliamentary Summary of the Week.  
Reports of Commissioners and Committees, and Parliamentary Returns.  
Discussion of Projects of Law Reform.  
Narrative of Important Public Affairs.  
Reviews of Legal and Literary Works.  
Articles on Topics affecting the Interests of the Profession, Legal Education, &c.  
Notes on the Law of Attorneys, Costs, and Evidence.  
Decisions on the Construction of Recent Statutes; and Observations on Points of Practice in Equity, Common Law, and Conveyancing.  
Proceedings of Professional Societies.  
Legal Obituary.  
Law Promotions and Appointments.  
Business of the Courts, Cause Lists, Sittings, and Circuits.  
Professional Lists, and an Abstract of the Gazette.  
The results of Sales of Estates, Reversions, &c.

The success of the SOLICITORS' JOURNAL may be considered certain; cordial assurances of support in all parts of the country having been received from gentlemen who have expressed their readiness to co-operate with the Directors by procuring subscribers, and the insertion of estate and other professional advertisements, so as to make the paper a valuable medium of communication, upon professional subjects, between practitioners in different parts of the kingdom. This feeling was expressed by so large a number of gentlemen attending the recent Provincial Meeting of the Metropolitan and Provincial Law Association at Liverpool, as to convince the Directors that the SOLICITORS' JOURNAL will supply a want that is strongly and widely felt. That meeting was an important professional event, which, highly satisfactory as it was to all who attended it, would have produced greatly increased benefits to the Profession, if its various points of professional and general interest could have been accurately presented to the Profession by some acknowledged organ of wide circulation.

With these views the Law Newspaper Company Limited has been formed under the

Joint Stock Companies Act, 1856. The shares have been fixed at £10 each, in order that a large body of Solicitors, to whom alone any shares will be allotted, may become shareholders.

One-half of the Capital will be called up at once; and future calls, if any should be required, will be made at intervals of not less than six months, and no call will exceed £2 per Share. The general affairs of the Company will be administered by a Board of Directors, whose services will be given gratuitously until a dividend of £5 per cent. be paid.

The promoters of this undertaking, however, desire to impress on their brethren in the Profession that a pecuniary return in the shape of a dividend is with them a secondary object. They hope to be able so to remunerate the Editor as to obtain the highest class of talent; and it is their wish that every accepted contribution should be paid for. They desire to possess such a body of correspondents throughout the kingdom as to secure the knowledge and consideration, by the whole Profession, of every occurrence material to its interests. They especially trust that the Officers of all the Local Law Societies will be in constant communication with the conductors of the journal. They cannot doubt that such arrangements will tend to keep up that class opinion, involving class control, which is found to have so salutary an effect in every profession in checking misconduct and promoting honourable practice.

The Directors do not feel that it will be possible to produce the First Number in a satisfactory manner earlier than the first week in January. The *Weekly Reporter* commences its current volume in November. The Directors, therefore, have made arrangements to supply subscribers to the SOLICITORS' JOURNAL with the numbers of the *Weekly Reporter* issued during the months of November and December, so as to make the volume complete.

The price of the SOLICITORS' JOURNAL, with the *Weekly Reporter*, will be One Shilling per week. The price of the SOLICITORS' JOURNAL alone will be Eightpence per week.

It is not intended to issue any double numbers.

The Subscribers will, therefore, for £2 12s. a year obtain a publication of general legal information, a series of established reports, and a complete annual digest of cases; and, in announcing this price, the Directors would mention that the *Jurist*, with its digest, cost last year £3 4s. 6d., and the *Law Times*, with its digest, £3 14s. 6d.

The subscription for the first year, ending in November, 1857, for the SOLICITORS' JOURNAL from January 3rd, 1857, including the *Weekly Reporter* from the 8th of November, 1856, will be £2 8s. post free.

The SOLICITORS' JOURNAL AND REPORTER will be published every Saturday morning in time for the early trains.

The following are the Directors of the Company until the first ordinary meeting :—

**William Strickland Cookson** (Clayton, Cookson, and Wainwright, 6, New-square, Lincoln's-inn, London), *Chairman and Treasurer.*

**Banner, Edward** (Liverpool).

**Barnes, Keith** (Lyon, Barnes, and Ellis, 7, Spring Gardens, London).

**Beamont, William** (Beamont and Urmson, Warrington).

**Bower, Thomas Holme** (Bower, Son, and Cotton, 46, Chancery-lane, London).

**Clabon, John Moxon** (Fearon and Clabon, 21, Great George-street, Westminster).

**Field, Edward Wilkins** (Sharpe, Field, and Jackson, 41, Bedford-row, London).

**Janson, Frederick Halsey** (Janson, Cobb, and Pearson, 4, Basinghall-street, London).

**Lace, Ambrose** (Lace, Marshall, Roscoe, and Gill, Liverpool).

**Lake, Henry** (H. and G. Lake and Kendall, 10, New-square, Lincoln's-inn, London).

**Lowndes, Matthew Dobson** (Lowndes, Bateson, and Lowndes, Liverpool).

**Ryland, Arthur** (Ryland and Martineau, Birmingham).

**Shaw, John Hope** (Shaw and Tennant, Leeds).

**Thorley, George** (Thorley and Robinson, Manchester).

**Trinder, William Henry** (Trinder and Eyre, 1, John-street, Bedford-row, London).

**Williams, William** (Currie, Woodgate, and Williams, Lincoln's-inn-fields, London).

OFFICES: 13, CAREY-STREET, LINCOLN'S-INN-FIELDS, where all communications may be sent, addressed to the Chairman.

It appears that by some mistake this Prospectus was not sent to the attorneys and solicitors generally until the circular of the *Law Times* had been issued. That circular states that "an attempt is being made to get up an opposition to the *Law Times*," not stating where or by whom it was got up; whether by some other barrister, or by some bookseller; but calling upon the persons addressed to "express in a few words their opinion of the services the *Law Times* had rendered to the solicitors, and its claims to their confidence." The "response," therefore, does not appear to be of the importance attached to it.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### POOR LAW AMENDMENT (SCOTLAND).

(19 & 20 Vict. c. 117.)

1. Power to Board of Supervision to appoint two general superintendents to assist in execution of act.
2. Powers and duties of general superintendents.

3. Annual instalments of money borrowed under recited act need not exceed one thirtieth of sum borrowed.

4. This and recited act to be construed as one.

The following are the title, preamble, and sections of the act:—

An Act to amend the Law relating to the Relief of the Poor, in Scotland. [29th July, 1856.]

WHEREAS an Act was passed in the eighth and ninth years of the reign of her present Majesty, intituled An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland, and it is expedient that the said act should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same, as follows:

1. It shall be lawful for the board of supervision acting in the execution of the recited act, with the consent of her Majesty's principal Secretary of State for the Home Department, to appoint by their order in writing two fit persons to be general superintendents of the poor in Scotland, to assist in the execution of the said act, or of any other act which shall hereafter be in force for the relief of the poor in Scotland; and such general superintendents shall upon their appointment severally take an oath *de fidei administratione officii*, which may be administered by any member of the board of supervision, or any one of the judges of the court of session, or the sheriff of the county; and it shall be lawful for the board of supervision, with the consent of the Secretary of State, to assign to such general superintendents the superintendence of any district or districts in Scotland, and also the execution and performance of all such duties under the recited act as the board of supervision may, with such consent as aforesaid, think fit, and the board may with such consent remove such general superintendents or either of them, and appoint another or others in his or their stead, and there shall be paid to such general superintendents severally such salary as, upon the recommendation of the board of supervision, the Commissioners of her Majesty's Treasury shall from time to time regulate and allow, such salary not to be less than three nor more than four hundred pounds per annum, and to be paid out of any monies to be hereafter voted for that purpose by Parliament.

2. The general superintendents and each of them shall be entitled to execute all the powers which are by the recited act conferred upon the commissioners thereby authorised or directed to be appointed.

3. And whereas by the sixty-second section of the said recited act it is provided, that any loan of money borrowed for the purposes therein mentioned shall be repaid by annual instalments of not less in any one year than one tenth of the sum borrowed, exclusive of the payment of interest on the same: Be it enacted, that after the passing of this act such annual instalments shall not of necessity exceed one thirtieth of the sum so borrowed, exclusive of the said interest.

4. This act and the recited act shall, as far as is necessary for the purposes of this act, be construed as one act.

the Inner Temple, barrister-at-law.—From the *London Gazette* of 5th December.

Mr. Richard Wright, solicitor, has been appointed Registrar of the Brompton County Court.

Mr. Charles William Moore, solicitor, has been appointed Town Clerk of Tewkesbury, in the room of Mr. Joshua Thomas.

John Shapland Stock, Esq., has been appointed

Recorder of Exeter, in the room of Mr. Serjeant Kinglake, appointed Recorder of Bristol. Mr. Stock was called to the Bar by the Honourable Society of the Middle Temple on the 25th of June, 1830, and went the Western Circuit.

The Queen has been pleased to appoint Walter Harding, Esq., to be Recorder of Natal.—From the *London Gazette* of 9th December.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

*In re Strong.* Dec. 8, 1856.

#### SETTLEMENT ON MARRIAGE OF INFANTS' ACT—CONSTRUCTION—INQUIRY INTO PROPRIETY OF MARRIAGE.

*Semble, that the 18 & 19 Vict. c. 43, s. 1, only imposes upon the court the duty of seeing into the propriety of the proposed settlement, and not of the marriage of an infant, although, under some circumstances, it may be necessary to inquire into the propriety of the marriage, in order to decide upon the propriety of the settlement.*

*The sanction of the court was given to a settlement, upon the production of an affidavit verifying counsel's statement, that the infant's friends were quite satisfied as to its being a proper marriage, both as regarded the age and circumstances of the parties.*

THIS petition was heard on the 6th instant by V. C. Stuart, to enable Miss Catherine Strong, an infant, to make a settlement of her property upon her marriage, under the 18 & 19 Vict. c. 43, s. 1, and upon which his Honor had directed an inquiry into the propriety of the marriage.

By the section, it is enacted that "it shall be lawful for every infant, upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement, or contract for a settlement, of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy, and every conveyance, appointment, and assignment of such real or personal estate or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the said court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years."

*Bagshawe*, in support, referred to *In re Dalton* (6 De G. M'N. and G. 20), where the Lord Chancellor had held that the statute only imposed upon the court the duty of seeing into the propriety of the settlement, and not of the marriage, although, under some circumstances, the court had a right to do so, where it might be necessary to inquire into the propriety of the settlement, in order to decide the question whether the settlement was proper. Counsel also stated that, in the present case, the infant's friends

were quite satisfied as to the propriety of the marriage, both as to the age and circumstances of the parties.

The Court, therefore, without deciding as to the necessity of inquiring into the propriety of the marriage, said that, upon production of an affidavit verifying the statement of counsel, an order would be made sanctioning the proposed settlement.

### Master of the Rolls.

*Worthington v. M'Craw.* Dec. 6, 1856.

#### TRUSTEE—LIABILITY FOR BREACH OF TRUST—ADVANCEMENT OF CONTINGENT LEGATEE.

*A testator gave a sum of money in trust for his son for life, and afterwards to his grandson, upon his attaining twenty-one years, with remainders over on his death under that age. It appeared that the trustee had advanced money to article the grandson during the father's lifetime, although there was no such power in the will: Held, that, upon the grandson attaining twenty-one, and his interest vesting, the trustee, who had acted bonâ fide, was not liable for the breach of trust.*

A TESTATOR, by his will, gave a sum of money in trust for his son for life, and upon his death, to his (the testator's) grandson upon his attaining the age of twenty-one years, with remainders over upon his death before attaining that age, as therein mentioned. It appeared that the trustee had, during the lifetime of the tenant for life, advanced a sum of money to article the grandson, who was then still a minor. The grandson had since attained twenty-one, and his interest had thereupon become vested, and it was now sought to render the trustee liable, as for a breach of trust, for such advancement.

*Cur. ad. vult.*

The Master of the Rolls said that, although the trustee might have become liable to the parties entitled upon the grandson's death under twenty-one, yet, as between such grandson and the trustee, who had acted *bonâ fide*, he could not be held liable for a breach of trust.

### Vice-Chancellor Kindersley.

*Heap v. Jones.* Dec. 6, 1856.

#### FORECLOSURE SUIT—TRUSTEE OF MORTGAGED PREMISES—DISCLAIMER—COSTS.

*In a foreclosure suit, the trustee appointed by the mortgagee of the mortgaged premises was made*

a defendant, and in his answer he stated that he had never accepted, nor acted in, the trust, and he thereby disclaimed: Held, that he was entitled to his costs as between party and party.

It appeared in this foreclosure suit that the trustee appointed by the mortgagor of the mortgaged premises had been made a defendant, and that by his answer he stated he had never accepted, nor acted in, the trust, and by his answer he disclaimed. The case now on upon motion for a decree.

*Renshaw* for the mortgagee; *Hall* for the other parties.

The Vice-Chancellor made the decree as sought, and said that although the plaintiff was obliged to bring the trustee before the court, yet as by his answer and disclaimer it must be assumed he was not a trustee, and therefore not a proper party in reality, he was entitled to his costs as between party and party.

### Vice-Chancellor Wood.

*Dale v. Atkinson.* Dec. 5, 1856.

WILL—CONSTRUCTION—NEPHEWS RESIDING IN THIS COUNTRY—SAILOR.

A testator gave certain property among all his nephews and nieces residing at the time of his death in this country. It appeared that the plaintiff was one of the nephews, and had been apprenticed to the merchant service, but he always returned to this country when not at sea, and occasionally went to Ireland where his wife's family resided. On the day of the testator's death he was in Ireland assisting in unloading his vessel, and was shortly afterwards discharged. There were other nephews in North America and in India: Held, that the plaintiff was entitled to a share in the bequest.

The testator by his will gave and bequeathed certain property among all his nephews and nieces residing at the time of his death in this country. It appeared that the plaintiff, who was a nephew, was born in Durham, and afterwards apprenticed in the merchant service, but that when not at sea he always returned to Durham or went to Sligo in Ireland where his wife's family resided. On the day of the testator's death, the plaintiff was in Belfast harbour assisting in unloading his ship, and he was shortly afterwards discharged. There were other nephews living in North America and in India.

*W. H. Bennet and Hemings* for the different parties.

The Vice-Chancellor said it appeared that the plaintiff had never abandoned his home in Durham where he generally returned, and that therefore, although the case was not free from doubt, he must be held to be entitled to share in the bequest.

*Stebbing v. Atlee.* Dec. 6, 1856.

CROSS-EXAMINATION OF DEFENDANT ON AFFIDAVIT AFTER DECREE—SUBPENA TO ATTEND EXAMINER.

Held, that in order to obtain the cross-examination of a defendant upon her affidavit, after a decree to take accounts, a subpoena ad testificandum must be served.

Section 81 of the 15 & 16 Vict. c. 86, does not apply to a case after decree.

No special order of the judge is required to compel the attendance of a witness summoned to attend in chambers before the examiner.

In this case, where a decree had been made to take the accounts, it was sought to cross-examine one of the defendants who had made an affidavit, and a summons was taken out for her attendance at chambers. She attended, but was not cross-examined, and an appointment was then obtained, of which she received notice, to attend before the examiner. She attended accordingly, and accepted £1, which was tendered for her expenses, but under the advice of counsel she refused to be sworn, on the ground that she had not been served with a subpoena. The examiner, Mr. Otter, now referred the question for the decision of the Court.

*W. H. Terrell*, for the plaintiff, referred to the 15 & 16 Vict. c. 86, s. 88, which enacts "that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of the Lord Chancellor, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally before the examiner, and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed; and such witness shall be bound to attend before such examiner to be so cross-examined and re-examined, upon receiving due and proper notice, and payment of his reasonable expenses, in like manner as if he had been duly served with a writ of subpoena ad testificandum before such examiner; and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively, in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be deemed costs in the cause of such parties respectively, unless the Court shall think fit otherwise to direct;" and to section 41, which provides that "in cases where it shall be necessary for any party to any cause depending in the said court to go into evidence subsequently to the hearing of such cause, such evidence shall be taken as nearly as may be in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing."

*Fooks* contra on the ground that a subpoena was required, and also that there was no order or direction from the judge.

The Vice-Chancellor said that if the witness required it she was entitled to be served with a subpoena as s. 38 did not apply to a case after decree. On the question whether any special direction from the judge

\* Section 40 enacts that "any party in any cause or matter depending in the said court may by a writ of subpoena ad testificandum or duces tecum, require the attendance of any witness before an examiner of the said court, or before an examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined: Provided always that the Court shall always have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case."

review such taxation before *Erie, J.*, at chambers, had been dismissed with costs.

On a motion for a rule nisi to set aside the taxation and to rescind the judge's order, Lord Campbell, C. J., said—"Those cases" are clearly distinguishable from the present. The submission here empowers the arbitrator to order a verdict or nonsuit, and the award expressly directs a verdict for the plaintiffs; and that, as to the action, is the event of the award." The rule was accordingly refused.

*Matlock Gas Company v. Peters*, 6 Ellis and B. 215.

## POINTS IN EQUITY PRACTICE.

### REVIVOR AFTER ABATEMENT FOR MORE THAN TWENTY YEARS.

A SUIT was instituted in August, 1831, and the defendant was duly served with a subpoena, but he never put in any answer, nor was it alleged he had ever appeared. The plaintiff died in March, 1835, and the defendant in 1837.

In December, 1855, a bill of revivor was filed by the plaintiff's heir-at-law against the defendant's heir-at-law.

The *Master of the Rolls* was of opinion that, if there were any equity, it could only be asserted by original bill, and that a bill of revivor would not effi- A demurrer was accordingly allowed.

*Bland v. Darison*, 21 Beav. 312.

## REMUNERATION OF ATTORNEYS.

AMONGST the papers read at the annual meeting of the Metropolitan and Provincial Law Association, held at Liverpool, in October last, was that of Mr. Edwin Field on the "Autocracy of the bar and the system of prescribed tariffs for legal wages." For the present, we propose to deal with the latter subject, as one of great practical importance to our readers, and peculiarly interesting at the present time, when the Lord Chancellor and his commissioners are revising the rules by which the taxing masters are restricted in the allowance of equity costs. Mr. Field goes to the very root of the evil: he says—

"The political economist tells you that of all legislative follies there is none so great as to try to regulate wages or prices. As a matter of science, I will leave to him the question whether law wages and prices are exceptions to his rule, and content myself, as a practical man, with briefly indicating—and the limits necessarily placed on this paper will not permit me to do more than indicate—the folly (to use no harder word) of this system, to an improvement in which members of our association are aware much of the attention of its committee during the last two years has been devoted. The system not only insists on paying all the workmen alike, the boy admitted yesterday at the same rate as the most skilled veteran, but actually prescribes more pay for *bad* work than for *good*—for *slow* work than for *quick*. As far as regulations can do such

a thing, it encourages the ignorant and stupid. It pays us for lengthiness, and fines us for brevity. It is easy to draw out a verbose statement—difficult to make it concise. Take a day in drawing out, say, a statement of fifteen sheets, and it assigns you £5 wages. Spend a second day in reducing the statement to half its length, and it pronounces you derelict of half the first fee, and makes you lose the second day of your time besides! If a solicitor investigates the law and decides a point himself, it assigns him just nothing—but if he writes out the question and sends it to counsel, saving himself much time, much wit, and all responsibility; then, though a lower degree of skill and knowledge is competent to *that* work, it assigns, on an average, something like ten times more wages. Paleontologists know the animal from his foot-prints: *from the tariff* you would take the solicitor for a jackall. Other agents are paid, in degree, by a commission, and in some proportion to the value of the property (or article so to speak) on which the workmanship and labour is to be expended. This is the method nature takes for identifying the interests of employer and employed. The merchant, the banker, the agent, the auctioneer, and in Scotland, and on the Continent, the lawyer too has, for his principal fee, a per centage. The broker has as much trouble in buying or selling £1,000 stock as £10,000. But his pay is according to the value to his employer of the thing committed to his agency. In the law, the interest of the lawyer is, by their system, made to oppose that of his client. Under it, rich and poor pay alike. The prescribed *toll* is the same for the donkey cart and the coach and six; and there are toll-inspectors appointed to see that they *shall* be the same.

"This subject deserves full development. If the public wants quick work it should pay by the piece, and make it the lawyer's interest to finish everything at the earliest moment; instead of, as now, paying for every step—whether it may be forward or backward; on the direct road or roundabout. Suppose cabmen were allowed to take any road they liked, and paid by the distance they went; or were allowed to take their own pace, and paid by the hour, how would the public get served by them? But so the law tries it should be with both branches of the legal profession—especially ours. Other evils arise from this system which I can but allude to. Think how much better the profession of medicine has worked, and how much higher it stands in public estimation, since the apothecary, charging only for drugs, had to pay himself for his advice and attendance by drenching us. It would be as reasonable to insist on this mode of pay for medicine being continued, as to insist on continuing such tariffs as are now forcibly imposed on us."

Mr. Field then notices the improper and unseemly rivalry of various courts, in reference to the costs allowed to the practitioners therein:—

"The legislative scrambling and shopkeeping rivalry and puffing which the practitioners in almost every court of justice set up in Parliament as against some other, hoping to get hold of some of its trade, come out of the two subjects to which this paper is addressed. One court is put up almost every session now-a-days, and another is put down. The Chancery County Palatine Court of Lancashire, in whose empire I now stand, has extensively a

\* *Boodle v. Davies*, 3 Ad. and E. 200; *Vates v. Knight*, 2 New Cas. 277.

concurrent jurisdiction with the High Court of Chancery, and pays for much of the work done in it, some thirty, or forty, or fifty per cent. more than Chancery pays for the same work and trouble. The *Bankruptcy* Court is trying hard to get chancery jurisdiction. It got it last session, most absurdly I think, for the winding-up *inter se* of Limited Liability Companies, although there may not be a single creditor in the case; and though it is utterly unversed in partnership law. Scandal says (lying no doubt, but it might be true) that the official assignees, or some other dependents, keep up a filibustering fund for these objects. That court assigns for an appeal before the Lords Justices just treble the fee the Court of Chancery assigns for an appeal before the same judges, though the latter work is certainly more onerous and important. When the tariffs emanate from rival judges, one can understand as well as lament this; but here the same identical judges are the dictators of both tariffs. The fees assigned are bounties in fact for one court, and prohibitions for the other; so far, that is, as competition prevails between the courts.

"The success of county and other local courts is materially affected by the same considerations. All great legislative experiments in the judiciary are also more or less affected by these absurd tariffs. There is no getting for such experiments a fair trial, because of the distorting influences of these legal tariffs. As an instance, I may mention that in calculations I have had occasion to make, I have proved to demonstration that the fees now recently assigned in chancery for certain new branches of important work, not only give the solicitor nothing, but cannot even pay the rateable share, reckoned by time, of a low salary to the clerk who assists him. It is obvious that such a state of things must seriously impede the working of those changes."

In the first part of his able paper, Mr. Field has discussed what he terms the "autocracy of the bar," the arbitrary regulations of the benchers, the monopolizing tendency of these "legal guilds," and he then proceeds to observe that the two subjects of legal guilds and legal tariffs are thus connected:—

"The tariff is enacted, and its items fixed, by the judges, who are, after all, only exalted barristers; many remaining benchers. They desire, I can with all earnestness affirm, nothing but to do their duty in this matter to the public. But they have been bred up in bar views, and if such things exist, with bar prejudices; as benchers they have perhaps joined in the bar ordinances. They truly and sincerely believe in the expediency of all that of which I have questioned the expediency. As a body, they are, as far as I have been able to judge, less acquainted than almost any other educated class with the researches on which economical science depends. At any rate, they believe their own occupation the solitary exception to its otherwise universal rules. No uncommon state of mind this. We have seen it as to silk, corn, and ships; and why not as to law? The extravagant disproportion of the fees allowed on *taxation* to the bar to those allowed to the solicitor surely must be, to some extent, traced to a bar bias in the original devisers of the tariffs. Any instance will illustrate this. A day or so before the courts rose in August, I was agent for a friend, now listening to me in an appeal before the Lords Justices. The bill of costs, if taxed, would contain the following

allowances:—Paid counsel to argue the appeal, £186 10s.; paid counsel's clerks (I suppose to see their masters had their papers), £6 1bs. For myself and two clerks preparing for and attending the hearing,—yes, and for watching and prompting counsel too, *six shillings and eightpence* only amongst us. Surely the solicitor and his clerks are as useful to the client as the barrister's clerk; but the tariff here gave the latter twenty, or, perhaps, more accurately sixty, times as much pay. We all know the fable of the Statue of the Lion and the Man. If the solicitors had had the making of the tariff (and the *employed* are, by nature's rules, the tariff makers), the solicitor would hardly appear so fearfully below the bar, and overtrodden by it, as in the example I have given; at any rate, not by the barrister's clerk. I have what is esteemed a large professional practice, but I do not doubt that there are barrister's clerks deriving from (if I may use the terms) their practice as large, or nearly as large, a professional income as (allowing for interest on my capital and other such deductions) I do from mine. The tariff very often indeed authorises them to levy from the suitor a passport fee larger than it would allow me to receive for my services.

"Whether there exist a bar bias or not, and if so, whether it has or not any bearing on the direction in which all the law changes go, one thing is certain; viz., that in these changes somehow the solicitors always go to the wall. During the last ten years the Law List will show that the bar has increased in number eighty per cent., while the solicitors have been absolutely stationary in their numbers. Their articulated clerks have diminished, during the same time, considerably in number. By the late chancery changes the work of the solicitors has been increased in quantity thirty per cent., and also in difficulty; and their emolument, at the same time, has been lessened between thirty and forty per cent.; and yet, according to the returns of my own office, the whole chancery bar must have received for fees in the year ending Long Vacation, 1856, twenty per cent. more than ever they got before. Had the bar and solicitors been one body, as in America, the present tariffs certainly could not have existed.

"Independently, however, of all comparative results, and setting aside all reference to the undue proportions existing between the remuneration the legal tariffs assign to us and that which they assign to the bar and to the clerks of the barrister; the objections to the present system of pay are very fully felt throughout the whole of our branch of the profession. I know no one subject on which there is so marked a concurrence among us solicitors. Protectionist or Free-trader, Conservative or Progressionist, we one and all dislike being ordered to regulate our remuneration for actual solid effort, and thought, and work, by the number of words spun out, or by any results arising merely from the copying clerks' fingers. It is not fair to us; it is not *honest* to our clients. This concurrence, the association is aware, has been fully represented to the law authorities; but our views have by no means been acceded to. The great change in chancery, by which the master's offices were abolished, arose from a bill prepared by this Association for a more summary jurisdiction for the Equity Chamber work. That bill was referred to a large select Committee of the Lords, who gave it great attention. Many of our body, some now here present, were examined by the Lords who attended; and (as one of the most able, himself not a lawyer, told me after the inquiry was over) the members were



all convinced the mode of pay was at the bottom of all the evils of the law. So, also, after an experience among the courts of nearly forty years, say I.

Lord Brougham, the chairman of this committee, at the close of its proceedings, tendered himself as a witness before it. After speaking of the delays of the court, then arising from the master's offices, he went on as follows:—"My opinion is as clear (with the whole of the evidence) that the other cause is the perfectly faulty mode of remunerating professional men, solicitors especially, but I do not except counsel. This opinion is the result of my whole professional experience and observation; and it is not confined to proceedings in equity. The subject is one of great difficulty, but it is of yet greater importance; and I feel assured that whatever other changes are effected to improve our system, whether of equity or common law, a large proportion of the evil will remain, unless this difficulty shall be grappled with and overcome."

"It is to be regretted that Lord Brougham has not followed up this evidence by bringing the subject before the Legislature. It was incidentally brought before the House of Lords by Lord Lyndhurst on March 26, 1855; and some of us, at Lord Lyndhurst's desire, waited on Lord Brougham to ask him to take part in the debate, and follow the matter up. This, however, he found himself unable to do. In the other House there exists, I fear, a permanent breadth of wet blanket ever ready and sufficient to stifle all discussion on the matter. There would appear to exist there, I fear, a belief so superstitious in the innate qualifications of barristers of seven years' standing, however briefless, and in the absolute disqualification for almost any office of those who do not possess that high merit, as to make any dispassionate consideration of these matters very improbable."

There are (says Mr. Field) on this point of pay, two questions which the public should ask itself:—

1st. How far, if at all, should there be an imposed tariff of law prices and wages?

2nd. If there should, ought the tariff to be made by the lawyers themselves?

"It is now more than fifteen years since some published observations of mine on the system of pay, similar to those contained in this paper, attracted the attention of the late Master of the Rolls (Lord Langdale), and through him of the then Lord Chancellor (Lord Lyndhurst). Lord Langdale's communication with me, and through me with the Incorporated Law Society, ultimately led to the establishment of a board of taxing masters, with the avowed intention 'of abolishing the plan of paying us far what was not done,' these are nearly Lord Langdale's words, 'by way of compensating us for our not being allowed to be paid for what was done.' The act rendering conveyancing bills taxable was passed as a part of this most valuable project; but since that time nothing effective has been done: and, whatever may be done, as far as I can see, Lord Langdale's views no longer have that ardent enthusiastic support from the authorities of the law, from which alone, I believe, large amendments can spring."

"The questions I have argued, especially the latter, are mercantile questions, and eminently the *client's* questions. Were there no law, or were there no means of applying the law to our recurring needs, there could be no property; and the com-

parative value and mercantibility of all property in one country and another; and the comparative honesty of countries in the conduct of the monetary affairs of life, much depend on the comparative perfectness of their respective legal arrangements; much more upon the comparative excellence of their legal machinery and legal workmen, than on that of their abstract law. The defects to which I have alluded—the latter eminently—will be found to have penetrated every part of our legal machine, and to have carried more or less poison through the whole of our social system. If chambers of commerce, and others watching commercial changes, and desirous of promoting true improvements, did but know how largely every *client's* interest is involved, these questions could not fail to excite that lay (or non-professional) attention which alone can bring about any really great amendment of the law. And I know no two questions of internal policy and arrangement, connected with the law, to the investigation and right adjustment of which any statesman could more usefully devote himself."

## NOTES OF THE WEEK.

### BUILDING IMPROVEMENTS IN THE LAW DISTRICT.

THE Law Union Assurance Company's building in Chancery-lane has proceeded with extraordinary rapidity within the last six weeks, from the designs of Mr. Penfold, the architect. The front elevation is entirely of stone, in the Elizabethan style, and contains a large amount of moulded and carved work about it, which is being in a great measure cut in position, the plain blocks for which have been built in as the work was set.

The new wing of the Law Institution is proceeding in a very satisfactory manner, under the superintendence of Mr. P. C. Hardwick, the architect. The system pursued in setting the stone work is by means of the "travelling crane," which is doing its work as usual with the greatest precision. The new building rests on a granite basement, and will in every respect harmonise with the old wing on the northern side of the present entrance of the old building.

The house, No. 113, belonging to the society, near to the new wing just alluded to, is now in process of demolition, and when Nos 114 and 116 are pulled down, and the whole block set back, a uniform and extra width of street will be obtained, extending to Fleet-street, which is so much needed in this crowded thoroughfare.

We regret to observe the great unsightly gap at the corner of Chancery-lane and Carey-street still remaining *in statu quo*. We should rejoice in connexion with this to see the block of dangerous-looking wooden houses opposite forthwith pulled down, set back, and rebuilt, so as to form a spacious opening from Chancery-lane to Lincoln's Inn-fields, to which we have adverted on a former occasion.

In this lane we shall soon have as much variety of architecture as any can well desire. In the first place, in the Law Institution we have the severe Greek of Sir Robert Smirke; then the Italo-Lombardic structure of Mr. Knowles, which forms part of Fleet-street; after that, and nearly opposite, the Renaissance tavern of Mr. Legge; and lastly the building of Mr. Penfold, an ornate specimen of Elizabethan;—all good to a very great extent in their different, although somewhat discordant, styles.—*Abridged from Building News.*

POST-OFFICE MARKS ON LETTERS.

In the recent sittings at Nisi Prius Lord Campbell stated that he had communicated with the Post-master-General with respect to the Post-office marks on letters, which were really discreditable to that department of the Government. Continental letters always showed the places through which they passed, and the date of their postage. But the stamp on English letters was so blotched that no letter or figure could be distinguished. This produced serious inconvenience, not only to individuals, but in the administration of justice. He was sure the Post-master-General was most earnestly desirous to do all in his power to remedy the evil. A case had been tried during the present sittings, in which a question arose as to the time when a letter was posted and delivered, and the marks were so indistinct that it required a person from the Post-office to make a conjecture as to what they indicated.

ECCLIASTICAL FEES.

In consequence of what transpired in a case tried before Lord Campbell at Westminster, in which a question arose as to the fees payable by a clergyman on being instituted to a living, his lordship made a communication to the Archbishop of Canterbury with regard to the preparation of a new table of fees, under

a section of the Pluralities Act, which had never yet been acted upon, and he received a reply from which he had reason to believe that such a table of fees as would put an end to all disputes in future would shortly be published.

LAW APPOINTMENTS.

The Honourable *S. F. Surtees*, has been appointed Chief Judge of the Supreme Court, Mauritius. Mr. Surtees was called to the Bar by the Honourable Society of the Inner Temple, 10th June, 1881.

*J. E. Remono*, Esq., has been appointed puisne judge of the Supreme Court, Mauritius.

*Giovanni Conti*, Esq., has been appointed Judge at Malta.

The Chief Justice of Antigua is appointed a member of the Legislative Council of that island.—*Observer*.

The Poor Law Board have appointed Mr. John Lambert, of Salisbury, solicitor, to be a Poor Law Inspector, in the room of Mr. Hall, resigned.

*Thomas Donohoe*, Esq., Barrister-at-Law, has been appointed Crown Prosecutor at the Commissions of Quarter Sessions for the County and City of Dublin, in the room of the Honourable John Plunket, Q.C., resigned. Mr. Donohoe was called to the Irish Bar in Easter Term, 1844.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

*Smith v. Spencer and others.* Dec. 11, 1886.

WILL—CONSTRUCTION—EXECUTORY DEVISE OVER—DEATH WITHOUT ISSUE—LIMITED ESTATE IN FEE.

*A testatrix devised certain freehold estate to trustees in trust to receive the rents, and after providing for repairs, &c., to apply part towards her grand-nephew's maintenance, and to let the residue accumulate until he should attain twenty-one, when the accumulations were to be paid to him, but on his death under that age, without leaving issue, the same were to be applied for such person and in like manner as the premises were limited, and when he attained twenty-one, the trustees were to stand possessed of the premises in trust for him in fee; but if he should not leave any issue, then upon trust for the testatrix's niece in fee; and if she should not leave any issue, then over as therein directed. The grand-nephew attained twenty-one, and married, but died intestate, without having had issue: Held, dismissing without costs, an appeal from Vice-Chancellor Stuart, that upon the grand-nephew's death without having issue, although he attained twenty-one, the niece was entitled to an equitable estate in fee simple, defeasible on her death without issue living at her decease.*

THE testatrix by her will devised certain freehold premises near Birmingham to trustees in trust to receive the rents, and after providing for repairs, &c., to apply a portion thereof towards the maintenance of her grand-nephew, and to let the residue accumulate until he should attain twenty-one, when she

directed the same to be paid to him. She also provided that, in case he should die under twenty-one without issue living at his death, the accumulations should be applied for the person to whom, and in like manner as, the premises were limited, and when he attained the age of twenty-one, the trustees were to stand possessed of the premises in trust for him in fee; but if he should not leave any issue living at his death, the trustees were to stand seized of the premises in trust for her niece in fee, and if she should not leave any issue at her death, then over as in her will directed. It appeared, on this special case as to the construction of the will, that the grand-nephew attained twenty-one, and married, but died without having ever had issue. The Vice-Chancellor Stuart having held that the niece thereupon took an equitable estate in fee simple, defeasible on her death without having issue, this appeal was presented.

*Sekwyn* and *T. H. Terrell*, for the grand-nephew's heir-at-law, in support; *Craig*, *S. Thomson*, and *Perrell* contra.

The Lord Chancellor said that the will conferred an absolute gift on the grand-nephew, defeasible upon his dying at any time without leaving issue, and not merely upon his death under twenty-one. The appeal would be discharged, but without costs.

Vice-Chancellor Kindersley.

*Miller v. Pridden.* Dec. 11, 1886.

DISMISSAL OF BILL AGAINST CERTAIN DEFENDANTS WITH COSTS—LIEN ON FUND AS AGAINST PLAINTIFF'S SOLICITOR.

*After a bill had been dismissed with costs against some of the defendants, a fund had been realised*

*from other defendants which was paid into Court, and on which the plaintiff's solicitor claimed a lien for his costs of suit. The dismissed defendants had registered the order of dismissal, and now presented a petition for a stop order on the fund in respect of their costs: Held, that they had no lien on the fund, and the petition was dismissed.*

THIS was a petition on behalf of certain defendants, against whom the bill had been dismissed with costs, and who had registered such order, asking for a stop order in respect of such costs on a fund which had subsequently been realised in proceedings against other defendants, and had been paid into court. The plaintiff's solicitor claimed a lien on the fund for his costs of suit.

*Selwyn and Fischer for the plaintiff; Bailey and Borton for the defendants; Shapter for the petitioners.*

The Vice-Chancellor said that although there might be a kind of natural equity that parties dismissed from a suit with costs should be paid such costs before the plaintiff recovered anything, yet such an equity, if recognized, would be constantly occurring, and similar questions would be always arising. The Court must, however, pause in the distribution of a fund until it was clear that the plaintiff had paid the costs. In the present case the parties who had been dismissed had nothing taken from them, and the Court was asked, in fact, not to prevent property being taken away, but to secure a lien on the fund in their favour. It must therefore be held that the solicitor, and not these defendants, had a lien on the fund.

*In re Commissioners of Ryde, ex parte Dashwood.*  
Dec. 12, 1886.

LANDS CLAUSES ACT—LANDOWNERS' COSTS—  
WILFUL REFUSAL.

*An owner of land required by commissioners of a town under their act, disputed their power to take the same, and refused to sell it accordingly, under the advice of counsel. He, however, afterwards executed the conveyances and received the money which had been paid into court: on the question of costs, held, that this was not a "wilful refusal" under the 8 & 9 Vict. c. 18, s. 80, as to disentitle the landowner to his costs.*

\* "Wilful refusal," under that section, means a refusal arising from the exercise of mere will or caprice.

It appeared that the petitioner, who was the owner of certain land required by the above commissioners, and which they had given notice they should require for the purposes of their act, had disputed their power to take the same, and refused to sell, under the advice of counsel. The commissioners tendered the purchase money and the conveyance for execution, and afterwards paid the purchase money into court. The petitioner, however, subsequently executed the conveyance, and obtained payment of the money out of court. The question was now raised whether he was entitled to his costs.

*Eddis, for the petitioner, cited Ex parte Bradshaw, 16 Sim. 174; In re Windsor, Staines, &c., Railway Company, 12 Beav. 522.*

*Karslake, for the commissioners, referred to the 8 & 9 Vict. c. 18, s. 80, which enacts that "in all cases of monies deposited in the bank under the provisions of this or the special act, or an act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to*

*convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; that is to say, the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimant."*

The Vice-Chancellor said that if the case had not been governed on principle by the decisions cited, it was very doubtful whether he should have arrived at the same conclusion. In those cases, however, Lord Langdale, following the opinion of the Vice-Chancellor of England, held that a wilful refusal meant a refusal arising from the exercise of mere will or caprice, and not from the exercise of reason. Here the petitioner had taken counsel's opinion, and there was no reason to suppose it was not a sound and fair one. The petitioner was therefore entitled to have his costs paid by the commissioners.

**Vice-Chancellor Wood.**

*Ex parte Minister, &c., of St. John's, Fulham, In re Chelsea Waterworks Company.* Dec. 13, 1886.

LANDS CLAUSES ACT—DAMAGE TO PARISH SCHOOLS—  
IMPROVEMENTS—COSTS.

*A waterworks company, in laying down their pipes, had damaged certain parish schools, and the amount assessed by a jury, which had been summoned, was paid into court. On petition of the minister and churchwardens, under a resolution of the committee of management, the amount was ordered to be paid out, to be applied towards proposed improvements to the schools, upon an undertaking for its being so applied, under the 8 & 9 Vict. c. 18, s. 69, the costs to be paid by the company, under s. 80.*

It appeared that the above company had, in laying down their pipes, done some damage to certain schools, the site for which had been granted by the Bishop of London, by deed of endowment, to the minister and churchwardens of St. John's, Fulham, and that such damages had been assessed by the jury summoned under the 8 & 9 Vict. c. 18, at £200, which had been paid into court. It also appeared, that the committee of management of the schools had passed a resolution concurring in proposed improvements to the schools, requiring a sum of £800, and had authorised the present petitioners to apply for payment out of court of the £200 towards such improvements.

By the 8 & 9 Vict. c. 18, s. 69, it is enacted that "if the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation," &c., "the same shall be paid into the bank in the name and with

the privity of the Accountant-General of the Court of Chancery in England, if the same relate to lands in England and Wales;" "and such monies shall remain so deposited until the same be so applied to some one or more of the following purposes,—that is to say," &c. "If such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct."

*W. Hislop Clarke* in support.

The *Vice-Chancellor* made the order as prayed, upon an undertaking by the petitioners to apply the fund as proposed, and directed the costs to be paid by the company, under s. 80.

### Court of Bankruptcy.

(Before Mr. Commissioner GOULBURN.)

*In the matter of W. C. Currie, a bankrupt.*

December 12, 1886.

THIS was a private meeting for an investigation.

Counsel were instructed both for the party to be examined and for the assignees.

The counsel on each side sent to inform the solicitors that they were prevented from attending by being unexpectedly detained in another court.

An application was therefore made to adjourn the meeting, by consent of both parties.

The Commissioner declined to appoint another meeting until a memorandum was put upon the proceedings that none of the costs of the adjournment should be charged to the estate.

[We do not see why the solicitor to the bankruptcy should be deprived of his fair costs of summoning witnesses and attending, and of the charge he has to pay for the "house fee," because without any default upon his part an adjournment becomes necessary. The propriety of the allowance of the costs of an adjournment is properly within the province of the taxing master.—ED L. O.]

## ANALYTICAL DIGEST OF CASES.

SELECTED AND CLASSIFIED.

### Appeals in Chancery.

#### ACCELERATING REMAINDERS.

See *Will*, 2.

#### ACKNOWLEDGMENT BY AGENT.

See *Vendor and Purchaser*.

#### ACQUESCENCE.

See *Injunction*.

#### AGREEMENT.

*Specific performance*.—Though the court may execute an agreement framed in general terms where the law will supply the details, yet if those details are to be supplied, in modes which cannot be adopted by the court, there is no concluded agreement which can be enforced in equity. *The South Wales Railway Company v. Wythes*, 5 De G. M'N. and G. 880.

#### APPEAL.

See *Costs; Mortgagees; Winding-up-Act*, 1.

#### APPOINTMENT.

*Power of revocation—Will*.—An appointment expressed to be made in exercise of every power enabling the appointor, does not extend to property which the appointor cannot appoint without the exercise of a power of revocation if there be other property to which the appointment can apply.

Therefore, where the donee of a power under a settlement to be exercised by deed or will, partially exercised it by deed, reserving a power of revocation, and afterwards by her will, by virtue of every power contained in the settlement, or "otherwise howsoever," appointed all the real and personal estate which, under the settlement or otherwise, she had power to appoint: *Held*, that the will operated on the unappointed part only, and was not an exercise of the power of revocation and new

appointment. *Pomfret v. Perring*, 5 De G. M'N. and G. 775.

#### ASSIGNMENT OF SHARES.

See *Specific Performance*.

#### BANKRUPT.

*Obligor of bond debt—Trustees—Release—Breach of trust*.—Trustees of a bond debt, on the bankruptcy of the obligor, concurred with his other creditors in consenting to the fiat being annulled on the payment of a composition. On the transaction being impeached some years afterwards by the *cestuis que trustent*, who were under disabilities: *Held* (confirming the decision of Vice-Chancellor Kindersley, *dubitante* Lord Justice Turner), that the trustees were liable to make good the full amount of the debt; it being impossible to show that the bankrupt would have obtained his certificate, or that the debt might not have been recovered in full. *Wiles v. Gresham*, 5 De G. M'N. and G. 770.

#### BREACH OF COVENANT.

See *Injunction*.

#### BREACH OF TRUST.

See *Bankrupt*.

#### CALL.

See *Winding-up-Act*, 1.

#### CHARITABLE GIFT.

*Lodging wayfaring men—Ambiguity*.—Where property was devised in the sixteenth century in trust to apply the income for the perpetual sustentation of an almshouse for the comfort, placing, and abiding of the poor within the city of R., and to provide six beds to harbour or lodge poor wayfaring men no longer than one night, to each of whom fourpence was to be paid; and also in trust to purchase flax, &c., for setting the poor at work

according to the 18 Eliz. c. 8, and the income or the property had greatly increased: *Held*, that an administration of the charity, which made no increase in the number of wayfarers relieved, or in the amount of the viaticum, was not a proper one, and that a scheme ought to be directed upon an information being filed, although it did not pray relief in respect of the administration of this part of the charity.

*Quære*, whether the payment (after making provision for poor travellers) of the residue of the income to the parish officers in case of the rates was a proper administration of the charity.

Where a charitable gift is ambiguous, it may be interpreted by the aid of contemporaneous usage, but no length of usage will warrant a deviation from the terms of a trust which the court regards as plain, and the court did not hold itself bound as to such deviation by proceedings in former suits, in which the question did not directly arise. — *Attorney-General v. Corporation of Rochester*, 5 De G. M'N. and G. 797.

And see *Costs*.

#### COMPROMISE.

See *Winding-up Act*, 1.

#### CONSTRUCTION OF WILL.

See *Will*, 2, 3, 4, 5.

#### CONTRACT.

*Public Company—Director—Confirmation*.—The 7 & 8 Vict. c. 110, s. 29, requiring that a contract or dealing between a company and any director shall be submitted for confirmation "to the next general or special meeting of the shareholders, to be summoned for that purpose." *Held*, to mean that the contract or dealing shall be submitted either to the next general meeting of the shareholders, or to a special meeting of the shareholders, or to a special meeting of the shareholders summoned for that particular purpose.

Where a report was read and adopted at a general meeting, and contained a notice of a resolution respecting an advance of money by directors of the company: *Held*, that it was a sufficient submission to the shareholders of the terms of the advance, supposing it to be a contract or dealing within the meaning of the above section, as to which *quære*.

The case of *Teversham v. Cameron's Coalbrook &c. Railway Company* (8 De G. and S. 296) observed upon.—*Murray's Executors' case*, 5 De G. M'N. and G. 746.

And see *Railway Company*.

#### CONTRIBUTORIES.

See *Winding-up Act*.

#### COSTS.

*Appeal for, on charitable information*.—There must be a substantial ground for an appeal on the part of defendants to a charity information to exempt them from payment of costs, and the intimation of the opinion of the court below upon the substance of the case in pronouncing a decree which contained no declaration, and merely directed a scheme, was not held to constitute such a ground.

*Attorney-General v. the Corporation of Rochester*, 5 De G. M'N. and G. 797.

And see *Mortgagees*.

#### "COUNSEL."

See *Will*, 3.

#### COVENANT.

See *Injunction*.

#### DIRECTOR.

See *Contract*.

#### DOWER ACT.

*Freebench—Surrender and death before admittance*.—The Dower Act does not apply to freebench.

The purchaser of a copyhold held of a manor, the custom of which entitled widows of the copyholders to freebench in one moiety of the lands of which their husbands died seised, took a surrender, but died before admittance.

*Held*, that his widow was not entitled to freebench at law or in equity.—*Smith v. Adams*, 5 De G. M'N. and G. 712.

#### ESTATE FOR LIFE.

See *Will*, 4.

#### FREEBENCH.

See *Dower Act*.

#### GIFT.

See *Will*, 5.

#### INDEMNITY.

See *Principal and surety*; *Specific performance*.

#### INJUNCTION.

*Interlocutory application—Acquiescence—Breach of covenant*.—Acquiescence in the violation of a covenant to a certain extent held a sufficient objection to an interlocutory application for an injunction against a greater violation of it.

Where, on a motion for an injunction to restrain an alleged breach of covenant, the question in dispute appeared doubtful: *Held*, that the burden of proof was on the plaintiff to show that the balance of convenience was in favour of granting the injunction.—*Child v. Douglas*, 5 De G. M'N. & G. 739.

#### INSURANCE.

See *Principal and surety*.

#### INTEREST.

*Payment of rent into court—Specific performance*.—A railway company having agreed to let its line to another, which had taken possession under the agreement, filed a specific performance bill against the other, which thereupon gave notice that it would pay the rent into court. The plaintiffs then gave the defendants notice, that unless the rent was paid to the plaintiffs, interest would be claimed on it under 3 & 4 Will. 4, c. 42, s. 28. The defendants obtained *ex parte* an order that they might be at liberty to pay the rent into court, and paid it in accordingly: *Held*, that they thereby obstructed the recovery of interest at law, and that the court had jurisdiction to order payment of interest.—*The Hull and Selby Railway Co. v. The North Eastern Railway Co. and others*, 5 De G. M'N. and G. 872.

And see *Vendor and purchaser*.

#### LACHES.

See *Winding-up Act*, 1.

#### LIMITATION FOR LIFE.

See *Will*, 2.

#### LOAN.

See *Will*, 5.

## MARRIAGE SETTLEMENT.

**Widow—Interested motives.**—In making a settlement of property belonging to a wife, the court looks not only to the portions of her fortune which the husband may have already received, but to all the circumstances of the case, and particularly to the husband's conduct.

Where, therefore, a widow about to marry again assigned all her property, except a life interest in the income of £10,000 Consols, to which she was entitled under a former settlement, in trust for her separate use during the coverture, and afterwards in trust for herself, if she survived, or, if not, for the second husband, and it appeared that he had married her from interested motives only, and there had been a divorce *à mensa et thoro* for adultery on his part, the court settled the whole income of £10,000 Consols on the wife, irrespectively of the question whether it had been by mistake or otherwise left out of the settlement.—*Barrow v. Barrow*, 5 De G. M'N. and G. 782.

## MINE.

See *Winding-up Act*, 2.

## MORTGAGES.

**In possession—Refusal to furnish accounts—Redemption suit—Costs—Appeal.**—An overstatement on the part of mortgagees in possession of a colliery as to the balance represented by them as remaining due on their mortgage, and their refusal to furnish accounts to the mortgagors, except on being paid the expenses of so doing, *Held*, not such vexatious conduct as to deprive them of their costs of a redemption suit.

On their appealing from a decree disallowing such costs, they were held entitled to have their costs of appeal.—*Norton v. Cooper*, 5 De G. M'N. and G. 728.

## PARTNER.

See *Specific performance*; *Winding-up Act*, 2.

## PRACTICE.

See *Will*, 5.

## PRINCIPAL AND SURETY.

**Promissory note—Insurance—Indemnity.**—One of the makers of a joint and several promissory note, who was a surety for the other, effected an insurance on the life of the latter, with his privity and concurrence, for an amount equal to that secured by the note. The principal died, having appointed the surety his executor, and the surety received the insurance money: *Held*, that to the extent to which it was not required for indemnifying the surety, it ought to be applied in payment of the debt.—*Lea v. Hinton*, 5 De G. M'N. and G. 823.

## PUBLIC COMPANY.

See *Contract*.

## RAILWAY COMPANY.

**Contract—Specific performance.**—An agreement between a railway company and railway contractors (who were also land owners) for the construction of a branch railway, provided that the company should find the land within a reasonable time and build the stations; that the contractors should give a bond to the amount of £50,000 to secure the performance of the contract, and undertake to execute the works for a double line of railway, and the ballasting and permanent way for

a single line, according to the terms of a specification to be prepared by the engineer for the time being of the company; that the company should work the branch in a reasonable and proper manner as compared to the remainder of the main railway; and that in case of difference as to working, the same should be settled by arbitration; and that any of the details of the arrangement, in case of difference, should be determined by a referee to be appointed by the Solicitor-General for the time being: *Held*, on demurrer, that this agreement was too vague, obscure, and uncertain, to be enforced in a specific performance suit, and that the stipulation as to the execution of a bond could not be enforced apart from the rest, being merely an incidental and subsidiary part of the agreement, and not within the principle of *Lumley v. Wagner*, where the negative stipulation was a distinct and substantive part of the contract.—*South Wales Railway Company v. Wytches*, 5 De G. M'N. and G. 880.

## REAL ESTATE.

See *Will*, 1.

## REDEMPTION SUIT.

See *Mortgages*.

## RELEASE.

See *Bankrupt*.

## REVOCATION.

See *Appointment*; *Will*, 1.

## SPECIFIC PERFORMANCE.

**Partner—Assignment of shares—Indemnity.**—The rule that he who seeks equity must do equity, is restricted to an equity in respect of the subject-matter of the suit.

Where, therefore, in a deed of dissolution of partnership, one partner assigned certain foreign shares (which were recited to be transferable, as it was believed, by delivery), and covenanted for further assurance; and the other partner covenanted to indemnify the former against certain liabilities; and it afterwards appeared that the shares were not transferable by delivery, but required a formal act to complete the assignment: *Held*, in a specific performance suit instituted by the assignee of the shares, that he was entitled to have the assignment completed, although there might in the meantime have been on his part a failure to perform the covenant of indemnity.—*Gibson v. Goldmid*, 5 De G. M'N. and G. 757.

And see *Agreement*; *Interest*; *Railway Company*.

## STATUTE OF LIMITATIONS.

See *Vendor and purchaser*.

## TRUSTEES.

See *Bankrupt*.

## VENDOR AND PURCHASER.

**Interest on purchase money—Statute of Limitations.**—*Acknowledgment by agent.*—A contract for the sale of an estate, made in March, 1811, stipulated that the purchase money should be paid on the 13th of May following.

The purchase money was not paid, but the purchaser entered into possession, and he and persons claiming under him, continued in such possession. In 1834, their agent signed a written acknowledgment of the vendor's title sufficient to take his lien for the principal of the purchase-money out of the Statute of Limitations 8 & 4 Will. 4, c. 27. s. 40. In 1849, the assignees of the vendor filed a bill

seeking to enforce the vendor's lien on the estate for the purchase-money: *Held*, that the 42nd section of the statute did not apply to the arrears of interest, but that the whole was recoverable from the 13th of May, 1811.—*Toft v. Stevenson*, 5 De G. M'N. and G. 735.

## WIDOW.

See *Marriage settlement*.

## WILL.

1. *Subsequent revocation—Real estate*.—The expression, "This is my last will and testament," does not operate as a revocation of a former will, without words to that effect, as regards real estate.—*Freeman v. Freeman*, 5 De G. M'N. and G. 704.

2. *Construction—Limitation for life—Revocation—Accelerating remainders*.—The words "from and immediately after his decease" following a limitation for life, in general point out the order of limitation merely. Where, therefore, a testator revoked a limitation for life, which was followed by these words, introducing subsequent limitations: *Held*, that the remainders were accelerated.—*Lainson v. Lainson*, 5 De G. M'N. and G. 734.

3. *Construction—"Cousins"*—*First cousins only entitled*.—Where a bequest is to "cousins," *simpliciter* first cousins only will, in the absence of anything to explain the meaning of the testator, be entitled.—*Stoddart v. Nelson*, 6 De G. M'N. and G. 68.

4. *Construction—Estate for life*.—A testatrix devised her real estates to trustees in trust as to the rents, issues, and profits thereof for all and every the children now or hereafter to be born of my niece, M. C., "who shall be living at my decease, during their lives, in equal shares, and for the survivors and survivor of them for life, &c., and after the decease of the survivor, in trust for all the lawful issue, male and female, of such of the children of my niece now or hereafter to be born as shall be living at my decease, in equal shares and proportions as tenants in common, and not as joint tenants, and the heirs of the body and respective bodies of all and every the issue of the said children, and on the death and failure of heirs of the body of any one or more of the issues of the said children," &c., in trust for the survivors, &c. At the testatrix's death, her niece had two daughters, one of whom was married, and had issue five children: *Held*, that the daughters of the niece took estates for life, with remainder to their issue as purchasers.—*Parker v. Clarke*, 6 De G. M'N. and G. 104.

5. *Construction—Gift—Loan—Chief clerk's certificate—Practice*.—The will of J. A. contained the following passage:—"I forgive to my said nephew, Jacob Appleford, the debt of £2,000, which I advanced to him on loan;" the testator had, on occasion of his nephew going into partnership, advanced to him £2,000 for his own use, and had also, at the same time, lent to the partnership different sums, the nephew's proportion of which would have amounted to about £2,000: *Held*, that whether the £2,000 was to be treated as having been a gift to the nephew or not, the testator intended in the above passage to refer to it, and not to the proportion of the partnership debt due from the nephew.

On an inquiry directed at the hearing, the chief clerk certified that the advance of the £2,000 was a gift, and not a loan: *Held*, that whatever effect this certificate might have on the hearing on further consideration, it could not be disputed by a party who had neither taken out a summons nor moved to have

it varied.—*Smith v. Armstrong*, 6 De G. M'N. and G. 150.

And see *Appointment*.

## WINDING-UP ACT.

1. *Contributory—Removal of name on motion—Appeal—Laches—Call for costs—List of contributories—Compromise*.—In 1851, a managing director of a provisionally registered projected railway company submitted to be placed on the list of contributories, under the Winding-up Acts, on the authority of *Upfill's case*. On a call being made, in 1854, on him and other contributories for the costs of winding up the company, he appealed, and at the same time moved that his name might be removed from the list of contributories, on the ground of the law being changed by *Bright's case*. The Vice-Chancellor (having directed the notice of motion to be served on the other contributories and the creditors who had proved) made an order staying all proceedings under the winding-up order: *Held*—

1. That such an order could not properly be made on the motions before the Vice-Chancellor, some of the persons served not having appeared.

2. That *Bright's case* having been decided in 1852, the application of the contributory in 1854 to be relieved from his submission to be placed on the list was made too late.

3. That the call for costs would have been properly made if there had been a proper list of contributories; but

4. That there being no list properly settled, but merely one having in many instances informal abbreviations placed opposite to the names in the list, and in others marks importing that the case of the person named was adjourned, without showing that it could not have been disposed of, no call could in that state of the proceedings be properly made.

5. That persons who have notice of a compromise between the official manager and any contributories must, if they wish to disturb it, take proceedings at once for that purpose.

*Underwood's case*, 5 De G. M'N. and G. 677.

2. *Mining company on cost-book principle—Transfer of shares—Contributory—Partner—Antecedent liabilities*.—The rules of a mining company carried on upon the cost-book principle provided that no shareholder should dispose of his shares without giving notice in writing to the purser of the intended transfer, and that every transfer should be according to a particular form provided for that purpose. The form was printed, and contained a notice that no transfer was valid or complete unless entered in the cost-book and acknowledged by the purser. A shareholder agreed to transfer his shares, and the proposed transferee stipulated that the transferor should pay the calls then due. They went together to the office of the company, and deposited with the purser a transfer of the shares executed by them both, and in the required form, and the transferor paid the calls, but no notice in writing was given of the transfer, nor was there any formal acknowledgment on the part of the purser.

*Held*, that the transferee was properly placed upon the list of contributories.

*Held*, also, that he was liable to the debts of the company incurred before the transfer.

*Semble*, by the Lord Chancellor, that where partnership articles provide that a partner may transfer his shares, they mean that he may so transfer them as to put the transferee in his place as to antecedent liability.—*Mayhew's case*, 5 De G. M'N. and G. 637.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, DECEMBER 27, 1856.

### THE SOLICITORS' JOURNAL AND REPORTER.

THE editorial columns, the legal news, and the correspondence of the *Law Times* have been turned into machines for propagating misrepresentation as to the origin and objects of the SOLICITORS' JOURNAL. The authors of the scheme for a new law newspaper are stated to be "seven agency houses," and their motive is declared to be, to bring about a "centralization" of legal business, which shall benefit themselves at the expense of their provincial brethren. Now, upon the simple question of fact—Who are the originators of the new journal?—a very brief statement will suffice. There are sixteen Provisional Directors of the Company, of whom nine are Metropolitan and seven are Provincial solicitors. It is no doubt true, as stated in the *Law Times*, that the seven names entered at the Registrar's Office as promoters of the new Company are all names of solicitors practising in London. They are simply the seven signatures which could be most expeditiously obtained to the necessary documents; and the fact that they all belong to London proves nothing as to the share which London men have taken, or will hereafter take, in the affairs of the projected newspaper. As, however, the new journal is to be published in London, it is undoubtedly true that the London Directors are likely to be most active in its management; but there is no pretence for saying that any one of the Provincial solicitors named in the prospectus is not as much interested in the success of the undertaking as his London colleagues. The fact is that the scheme first assumed a practical shape at Liverpool in October last. Provincial solicitors were among its most active and earnest advocates at the outset, and they continue to be its most zealous friends. It is true that their own more immediate duties prevent their attending regularly the meetings of the Directors in London, but their time and thoughts are nevertheless employed in promoting a scheme of which they thoroughly approve.

But, whatever be the exact share of the London Directors in the management, it is simply untrue to say that the firms to which they belong are all "agencies." Six of the Provisional Directors either have no agencies whatever, or their business is of such a character, that no one acquainted with the pro-

fession would think of classing them as agents, and it is strange that the self-elected organ of the Solicitors should have fallen into so gross an error. The remaining three Directors have large agency connections.

Now if the *Law Times* is thus proved to be completely wrong in point of fact, it can scarcely be necessary to refute the injurious imputations it has superadded. The new journal has been set on foot by a combination of town and country solicitors for the general good of the profession. It is not got up by "agency houses" and will not be conducted by "agency houses" exclusively, and it is not designed to promote, and will not be wrested from its legitimate purpose into promoting the petty personal views and interests of any individual or section either in town or country.

And, further, the *Law Times* supplies a forcible answer to itself. It argues, that "the seven agencies, who have enormous work of their own to occupy their time and thoughts," would not take upon themselves the task of getting up a newspaper "without some overwhelming motive of personal interest," namely, the augmentation of the business of their own offices. But men who have already as much work as they can do are not likely to be moved exclusively by the desire to get more work. Besides, it is probable that any "centralizing" change in the practice of the law would tend to give business to other London houses, rather than to increase the business of the existing "agencies." And, if the country Solicitors were injured by such a change, we cannot doubt that their agents in town would suffer by the same blow.

But, surely, the general body of solicitors is not itself so base and sordid as to believe that base and sordid motives can alone predominate in individuals. Why should not the sixteen Provisional Directors of this new Company be presumed to act upon the motives they have themselves alleged, at least, until the contrary is proved, and not merely asserted by the *Law Times*? They profess to think—and surely they have a right to their own opinion—"that their branch of the Profession has never been adequately represented by any organ in the press." The *Law Times*, no doubt, thinks its own advocacy all-sufficient; but the feeling of dissatisfaction with it is neither new nor partial. It would be easy to justify this feeling by reference to the history of past years; but we believe that if any dispassionate reader will peruse a recent number of the *Law Times*,



he will demand no further proof of the reality of the alleged want. We apprehend that, whenever any question affecting the interests of Solicitors comes before Parliament and the public, it is desirable that the Solicitors' case should be so presented as to secure the attentive consideration of reasonable and moderate men. But can any unprejudiced person read the *Law Times* of Saturday last, and not perceive that such an advocate would ruin the best and purest cause? The statements made by it are obviously untrue; and, even if they were true, the inferences drawn from them would still be manifestly unjust. If this be the character of the Attornies' friend, what must the uninformed spectator think as to the character of the Attornies? Has the *Law Times* laboured, as it tells us, for thirteen years to elevate the morality of the profession, and are professional morals, after all, so very low as must be believed from the tenor of these articles? The "seven agency houses" are admitted by the *Law Times* to be eminent, at least in what it chooses to say is their peculiar line. They are declared to be among the leaders of the profession, and they have been guilty of a conspiracy to promote, by false pretences, their own advancement and the injury of their provincial brethren. If this be true, or even if it be possible for country solicitors to be persuaded that it is true, the labours of the *Law Times* to "maintain the character" of the profession have been fruitless, and it is time to place that duty in other hands. If the exhortations of the *Law Times* to "educational improvement and the preservation of a high tone of professional honour," have, as it says, been ceaseless; and if the character of the profession be now what the *Law Times* would lead us to believe, there cannot be any question that a new and more efficient organ of class opinion should be forthwith instituted. The *Law Times* complains in no measured language of attempts having been made to injure it. These complaints, we believe, are groundless, and the *Law Times* itself appears to us to be its own greatest enemy.

The recent numbers of the *Law Times* have appealed to its subscribers and the Profession generally for a vote of confidence. The "response of the Profession" to this appeal has been published in the shape of supplements, and about eight hundred solicitors in town and country have returned such answers as it suited the *Law Times* to publish, either wholly or in part. It is not, however, by any means impossible that many more letters may have been received, which it would be decidedly unsafe to print. And, besides, we apprehend that the witnesses thus produced to the merits of the *Law Times*, are not, in general, the most influential solicitors of the districts from which they write.

The authors of the new scheme have never

said that the *LEGAL OBSERVER* was "the only journal promoting the interests of the Solicitors," but that it was "the only journal which distinctively represents the Solicitors." The complaint of the *Law Times* on this head, therefore, is wholly groundless. Nor is it at all more true, as stated in the same journal, that the Metropolitan and Provincial Law Association was formed "through the medium and by the help of the *Law Times*." This extravagant assertion must surprise and amuse many members of the Association, who have been hitherto unconscious of its illustrious parentage.

The intentions and acts of the projectors of the *SOLICITORS' JOURNAL* have throughout been open and undisguised. Their object has always been to establish a legal, and not a general, newspaper. Nevertheless, they desire that their journal should so select its subjects, and so handle them, as to attract the non-professional reader, and gain from the public at large a fair hearing for the reasonable demands of the solicitors. The proprietor of the *Law Times* is an individual, and may without injustice be supposed to pursue, however he may disclaim it, his own peculiar interest. But the proprietors of the *SOLICITORS' JOURNAL* are exclusively solicitors in town and country, and it may be confidently affirmed that the newspaper they themselves establish will most efficiently protect their rights, and enforce their claims. It will be especially devoted to the interests of solicitors; but it will not, therefore, as suggested by the *Law Times*, have any tendency to widen the separation between solicitors and any other class, or to lower the social rank of the body which it is designed to elevate. Nor is it alone the pursuit of individual interests that is objected to the *Law Times*. The personal aims of the proprietor of that journal, and of his associates, have been habitually prosecuted by methods which must be fatal to the respectability and influence of any newspaper. It has long been a source of grave dissatisfaction to solicitors to see that a journal which chose to constitute itself their patron, was made the ordinary vehicle of what we can only describe as puffing. The character thus gained by the advocate must be fatal to the cause, and besides, it injuriously affects the character of the client.

These feelings, widely spread in town and country, have led to the undertaking of the *SOLICITORS' JOURNAL*. The majority of the shareholders in the Company are country solicitors, whose voice in the management will be at least as potential as that of their London brethren. The scheme of "centralisation" ascribed by the *Law Times* to certain of the promoters, never entered into the minds of any of them; and if they had conceived such an idea, they certainly would not have united with the very men who must suffer most severely from carrying it out.

NOTICES OF NEW BOOKS.

BEFORE concluding the last pages of the *LEGAL OBSERVER* (at least, in its present form), we have to pay our respects to several authors whose works have been forwarded for our perusal, and must offer our apologies for the brief manner in which their respective merits are noticed.

*Lives of the Lord Chancellors and Keepers of the Great Seal of England from the Earliest Times till the Reign of King George IV.* By JOHN LORD CAMPBELL, LL.D., F.R.S.E. 4th Edition. London: Murray. 1856. Vol. 1. pp. 432.

WE are glad to grace our pages with a brief record of the publication of this new and popular edition of Lord Campbell's "Lives of the Lord Chancellors of England." In the preface his Lordship says:—

"A new edition of 'The Lives of the Chancellors' being called for, I have employed this Long Vacation in carefully revising the whole work, and I now offer it to the public in as perfect a state as I can hope that it may ever attain. The minute criticisms which it has undergone in print, the private communications which I have received from friendly readers, and my own subsequent researches, have enabled me to correct various mistakes in the text, and to enrich the notes with valuable illustrations and references.

"As I despair of further improvements, the work is now stereotyped. I should have been glad if there had been no change in the appearance of the page or the number of the volumes; but, with a view to make it accessible to all who may have a taste for such reading, I have followed the example of my distinguished friend Mr. Hallam, and adopted a form of publication which admits of a considerable reduction in price, and, avoiding double columns, may be agreeable to the eye of the reader.

Adverting to the changes which have taken place of late years in the high office, duties, and emoluments of the Lord Chancellor, the noble biographer observes that—

"Recent events have been still more unfortunate for the office of Lord Chancellor as connected with the appellate jurisdiction of the House of Lords. Without the slightest blame being imputable to the present excellent holder of the Great Seal, the judgments of the House of Lords in his time had not given entire satisfaction to the bar or to the public, and some change in the tribunal became necessary. The creation of a peerage for life was very inconsiderately resorted to. "*Hinc fente derivata clades*—" The Lords, in the exercise of their undoubted privileges, having judicially determined that a peer for life cannot as such sit in parliament, a committee was appointed to consider what was fit to be done for improving the appellate jurisdiction of the House. This was eagerly embraced as an opportunity to bring forward charges which, though most offensive to former holders of the Great Seal, and, generally speaking, quite unfounded, were listened to without the smallest check by the committee. In consequence a sudden belief arose in the public mind, that the appellate jurisdiction of the House of Lords, which for centuries had commanded more respect than the jurisdiction of any other tribunal in the kingdom, was usurped, and was liable to every charge which can be made against forensic proceed-

ings except that of pecuniary corruption. Some new measure was necessary to satisfy the nation; and, instead of recurring to expedients which might have been rendered effective by their own authority, the Lords, following the unlucky advice of their leaders on both sides, preferred a scheme for which the sanction of the two houses as well as of the Crown was necessary, viz., having a certain number of salaried peers for life, with the title of "Deputy Speakers" to assist the Lord Chancellor. The Bill for this purpose being thrown out by the House of Commons, in what a state is the Lord Chancellor for the time being now left? "Single-seated justice," which was applauded in the time of Lord Hardwicke and Lord Eldon, will no longer be endured, nor the *divisum imperium* of the Lord Chancellor and a retired Common-law Judge, however distinguished. The probable experiment will now be a Judicial Committee, consisting of peers, and of judges and privy councillors summoned to advise the House. There the Chancellor will have no official ascendancy, and a Vice-Chancellor or a Puisne Judge may be selected to declare the judgment of this tribunal according to the applauded practice in the Judicial Committee of the Privy Council.

"I care little about the reduced salary of the Lord Chancellor, although it is not now sufficient to enable him to keep a carriage, and to exercise becoming hospitality, much less to make any provision for his family. Against poverty a noble struggle may be made; but there seem to be causes in operation which, in spite of the most eminent learning and ability, must speedily reduce the office to insignificance and contempt. This is a sad prospect for the Biographer of the Chancellors.

'May I lie cold before that dreadful day,  
Press'd with a load of monumental clay!'

"And yet" (in the beautiful language of my predecessor, Lord Chief Justice Croke) 'Time hath his revolutions: there must be a period and an end to all temporal things—*finis rerum*—an end of names and dignities, and whatever is *terrene*—for, where is Bohun? Where is Mowbray? Where is Mortimer? Nay, which is more and most of all, Where is Plantagenet? They are entombed in the urns and sepulchres of mortality!'—And why not the Marble Chair?"

*An Introduction to the Principles and Practice of Pleading in Civil Actions in the Superior Courts of Law at Westminster.* By WATKIN WILLIAMS, Esq., Barrister-at-Law. London: Butterworths. 1857. pp. 339.

IN addition to the general title above set forth, this volume comprises an outline of the whole proceedings in an action-at-law, with the General Rules of Practice and Pleading. On the alterations in the *practices* of the courts effected by the Common Law Procedure Acts of 1852 and 1854, there are several able works; but it was certainly high time that the principles and practice of *pleading*, as they now stand, should be expounded. This task Mr. Watkin Williams has successfully accomplished. He observes in his preface that—

"The system of pleading in the superior courts of law having, in many important respects, been newly moulded within the last few years, it has been thought that a new work upon the *principles and practice of pleading* might prove acceptable to stu-

dents and also to the profession; a treatise upon the entire subject has accordingly been undertaken.

"The present volume, embracing the introductory division of the work, is offered to the student in a distinct form, and complete in itself. The remaining portion, which has been some time in course of preparation, will be issued as speedily as due regard to accuracy and the difficulty of the task will permit."

Mr. Williams has arranged the materials collected for the present volume in the following order:—

1. Origin of the Superior Courts, and their ancient Jurisdiction.
2. The Ancient modes of Procedure.
3. Progress from the Ancient to the Modern Jurisdiction, and Procedure of the Courts.
4. The Superior Courts of Law, their Modern Jurisdiction, and procedure.
5. Procedure by Action.
6. Commencement of the Action,
7. The Pleadings in general.
8. Modern Pleadings: first.
9. Modern Pleadings: second.
10. Modern Pleadings—Replication and subsequent pleadings.
11. The Issues, and the Tribunals by which they are decided.
12. Proceedings upon Trial by Jury.
13. Proceedings to Judgment.
14. Proceedings in the nature of Appeal.
15. Execution.
16. Arrest on Mesne Process and Bail.
17. Costs.
18. *Regule Generales*, Hilary Term, 1853—the Rules of Practice.
19. *Regule Generales*, Trinity Term, 1853—the Rules of Pleading and the Rules of Michaelmas Vacation, 1854.

As an example of the author's composition, and for the use of the student, we extract the following passages from the chapter on Pleadings in general:

"In ancient times, when the appearance was actual, the pleadings were conducted orally in open court, either by the parties themselves or their pleaders, under the immediate superintendence of the judges.

"The plaintiff was first called upon for a statement of his cause of action. This was called the *narratio* or *count*, and since then the *declaration*, and where he had two or more distinct causes of action, he was required to state each in a distinct count. The defendant was then called upon for his *plea*, or his statement of what his defence was, and, passing over certain preliminary objections that he might have made to the suit, he might have denied the truth of the whole or a material part of the facts alleged in the count, in which case he was said to plead by way of *traverse*, or he might have disputed the validity of the plaintiff's claim, asserting that it disclosed no cause of action, in which case he was said to plead by way of *demurrer*; in both of these cases, it is clear that an issue would already have been arrived at in the former case upon a matter of fact, in the latter upon a point of law. The defendant, however, might, without disputing the validity or the truth of the declaration, have made a defence by disclosing additional facts, destroying the *prima facie* legal effect of those alleged by the plaintiff; this being called a plea in *confession and avoidance* of the declaration.

"To illustrate these by example, suppose the plaintiff to declare that he and one E. F. were in the

service and employment of the defendant, in his trade and business of a miller, and that the said E. F. conducted himself in the course of such his employment in a certain negligent and improper manner, and so caused a serious injury to befall the plaintiff. Now, in the first place, the defendant might have traversed the fact, that E. F., who caused the accident, was in his service, or he might have traversed the fact, that he had been negligent.

"Secondly, he might have *demurred* to the declaration, upon the ground that a master is not responsible to one servant for the negligence of a fellow servant, at least, not unless he had continued to retain such servant, knowing his negligent character, and had entrusted him with employment, which, in such case, it was not proper or safe to have done, which was not alleged by the plaintiff to have been the case. If the plaintiff had merely by inadvertence omitted to state in his declaration a fact which was material to his right of action, he would have been allowed, upon discovering his mistake, to have corrected himself, and have amended his statement by the addition of the omitted fact.

"Thirdly, the defendant, without disputing the truth or validity of the count, might have pleaded, that after the occurrence of the matters therein mentioned, and before the commencement of the action, the plaintiff and the defendant agreed together, that the defendant should give, and the plaintiff should accept, the sum of £100, in full satisfaction and discharge of all claims of the plaintiff against him by reason thereof, and that afterwards and before the action the defendant paid to the plaintiff, and the plaintiff then accepted, the sum of £100 in full satisfaction and discharge as aforesaid.

"When the defendant thus introduced new facts, without disputing the truth of those alleged by the other side, it is evident that as yet there would have been no issue arrived at, everything alleged by the plaintiff having been omitted; the court, therefore, passing over the original allegations of the plaintiff, as not involving any of the matters in dispute, called upon him to reply to the new matter advanced by the defendant, in avoidance of the declaration; and by his *replication* the plaintiff might, in like manner, have traversed or demurred to the plea, or have replied by way of confession and avoidance. To illustrate this by a different example, suppose the defendant to have pleaded in confession and avoidance, that the plaintiff had by deed released and exonerated him from the claim; the plaintiff, without disputing the validity of such a defence, or the fact that he had given the deed, might have alleged that the deed was obtained from him by the fraud of the defendant.

"So long as the validity and the truth of the statements of either party were thus admitted by the other, and fresh facts were brought out, to avoid their effect, no issue was arrived at, and each statement thus admitted, was in its turn passed over and discarded, as containing no point in dispute; and the parties were compelled to go on alternately answering each other until the matter really in dispute being advanced by one of them, and denied by the other, brought them at last to issue."

*A Treatise on the Law relating to Bankers and Banking.* By JAMES GRANT, M.A., Esq., of the Middle Temple, Barrister-at-Law, Author of "The Law of Corporations in General." London: Butterworths. 1856. pp. 670.

This is a well-designed and well-executed work.

There can be no doubt that it was desirable to post up the law of banking, collected from the recent acts of the Legislature and the decisions of the superior courts, and arrange the whole in clear and methodical order. In this view Mr. Grant states the plan that has been followed of placing before the reader

"Not merely statements of the dry points of law, which were decided in the cases collected; but, as a rule, a summary of the principal facts, and occasionally of the arguments urged before the court, together with the main grounds on which the judgment proceeded, are also presented. By this means, and by the endeavour to lay down no position or principle unaccompanied by examples to illustrate its application and effect, it has been hoped to provide facilities, in a compendious form, for the solution of every question that can arise, provided such question, in its nature, falls within any of the classes of questions which have already passed into *res judicata*. By this means, at any rate, it may be hoped that a person who consults this work, in order to know what are his rights or liabilities, and what the proper course of conduct in any given set of circumstances, will be enabled readily to observe and to decide whether the principles and rules stated under the head to which his difficulty belongs, have been applied to or deduced from, circumstances the same as, or analogous to, those of his particular case, and whether the reasons assigned by the court meet the difficulty and govern the case."

The author adds that—

"With respect to those comparatively new modes of carrying on the business of banking, the banking copartnerships, and joint stock banking companies, much attention has been paid, to place before the reader the law relating to them in as clear a light as possible; the subject of directors' powers and liabilities, civil and criminal, the rights and liabilities, and remedies of shareholders, as involved on the bankruptcy, or winding up of these bodies, and also generally, it is hoped, will be found explained in as satisfactory a manner as the present state of the law admits of."

The following are the contents of the volume:—

- "1. The general outline of the Relations between Banker and Customer, and the Principles and Rules of Law governing those relations.
- "2. The Rules and Principles governing Cheques or Drafts on Bankers.
- "3. The Duties and Rights of Bankers in respect of Bills of Exchange made payable at their Banking-houses.
- "4. The Duties of Bankers in respect of the Orders of their Customers.
- "5. The Obligations of Bankers giving Accountable Receipts.
- "6. The Rights and Liabilities, criminal and otherwise, of Bankers on the deposit with them of a Customer's Securities for safe custody or other special purpose; as also on the taking of Securities against Loans or advances made to Customers.
- "7. The Rights and Remedies on Guarantees, Bonds, &c., given to Bankers by third persons to secure Advances to Customers, and when given to secure the Fidelity, &c., of Clerks, Officers, &c.
- "8. The Principles upon which, on a Customer's Running-account, Payments made by him into the Bank are to be appropriated.
- "9. The Rules regulating the Lien which a

Banker has upon Securities, Goods, Shares, &c., of Customers, when placed in his hands.

"10. The Law as to Banking Partnerships constituted at Common Law, and also as to the Rights, Remedies, and Liabilities of Customers in dealing with Firms as Customers.

"11. The Rules, Principles, and General Considerations on which the conduct of Bankers is to be guided on the Bankruptcy of Customers: the Rights of Bankers, and the several modes of realising them, &c., together with the Law relating to the Bankruptcy of Bankers themselves.

"12. The Law governing the relations of Societies, Commissioners, and other bodies of a public character, and of persons bearing a representative character, to Bankers, and the relations of the latter to the Bank of England; together with Matters relating to the Public Stocks, to Shares, Bank Stock, Exchequer Bills, &c.

"13. Matters affecting the Rights and Risks of Bankers in affording Accommodation by way of Discounts.

"14. The Law as peculiarly relating to Country Banks, and their Bank Notes, and governing transactions with Town Correspondents, &c., in the remittance of Money, Bills, Notes, &c., and in case of Bankruptcy, &c.

"15. The Decisions and Enactments relating to Banking Copartnerships formed under 7 Geo. 4, c. 46, and to Shares and Shareholders, Directors and other Officers therein, and the Rights and Remedies of Customers, together with the subjects of the Bankruptcy and Winding-up the affairs of these bodies.

"16. The Decisions and a summary of the Enactments relating to Joint Stock Banking Companies constituted under 7 & 8 Vict. c. 113, &c., comprising the Rights and Remedies of Customers and Shareholders respectively, the Duties and Responsibilities, criminal and otherwise, of Directors, Managers, and other officers; and the subjects of the Bankruptcy and Winding up the affairs of these bodies.

"17. A Summary of the Law of Savings' Banks, chiefly as affects ordinary Bankers becoming connected with these institutions."

*An Exposition of the Joint Stock Companies Act, 1856, designed as a Practical Guide for the Promoters, Directors, Shareholders, Solicitors, Secretaries, Officers, and Creditors of Mercantile, Mining, and all other Companies.* By THOMAS TAPPING, Esq., Barrister-at-Law. London: Mining Journal Office. pp. 88.

WE collect from the title-page and preface of this work, and its having been issued from the office of the *Mining Journal*, that the author's object is principally directed to such joint-stock companies as are engaged in mining transactions, and it is evident that in this respect the work will be peculiarly valuable in the formation of such companies, and the regulations for the management or winding up thereof. We observe in the preface that Mr. Tapping brings forward and ably states the several objections which have been raised to the alteration in the law of joint-stock companies; but he candidly says, "it is not intended to cavil at a measure for which the nation generally, and mercantile men in particular, may well be thankful." After stating the various objections which have been urged against the measure, Mr. Tapping observes that—

"As the legislature has, however, thought proper

o except from the operation of the 4th section as well all companies authorized to carry on business by some private Act of Parliament, or by royal charter, or letters patent, as those engaged in working mines within and subject to the jurisdiction of the stannaries; it is asked, why not except all coal-book companies, whether working mines without or within the stannaries jurisdiction? To which no satisfactory answer can be given: although to compel a mining company to become a joint-stock company is in nearly all cases to prevent its formation."

## CONCLUSION OF THE "LEGAL OBSERVER."

OUR readers, we trust, will allow us to address a few words on concluding our labours in the compilation and management of the *LEGAL OBSERVER* during twenty-six years and upwards. We would, in the first place, observe, that the work was not instituted as a personal speculation, or its plan settled by any single individual. In 1830, large and comprehensive schemes of law reform were announced, and it appeared to many eminent attorneys at that time that a periodical publication should be commenced under the superintendence of members of their branch of the profession, for the purpose of recording and discussing the projects for the alteration of the law, and enabling the practitioners to communicate their opinions on such proposed changes as might affect their position and the interests of their clients.

At a somewhat numerous meeting of leading attorneys, a general plan was sketched out, and the present Editor was requested to use his exertions in carrying it into effect. Aided by several able contributors, and under valuable advice, the work was commenced, and successfully established.

It comprised the statement and discussion of all the projects in Parliament, or elsewhere, so far as they concerned the profession; the means adopted for the improvement of its members; the proceedings of the several societies of attorneys; the amendment of legal practice; the status of that branch of the profession; the honours and emoluments, and the exclusive privilege of audience, claimed by the bar; and the exclusion of attorneys from the inns of court, and from many posts of distinction.

The prosperity of the work soon induced numerous competitors to enter the field. During the first few years several rivals appeared, and in no long time vanished. But at length the defects in the system of law reporting, the delay in publishing the decisions of the courts by the so-called "regular reporters," and the great expense of their ponderous volumes, in addition to the constant excitement produced by the never-ending changes in all departments of the law and practice, made way for new publications to

meet the supposed wants and interests of the profession at large.

The *Justice of the Peace* first came forward, seeking to inform and instruct the magistrates all over the country, and the numerous and intelligent body of magistrates clerks. Next came *The Jurist*, which, from first to last, has mainly devoted its columns to the reports of the decisions of the superior courts, and to the statutes, either at large or abridged, as appeared expedient. Finally appeared *The Law Times*, which had the ambition to include all the objects of *The Justice of the Peace* and *The Jurist*, with the addition of the varied materials usually found in the pages of the *LEGAL OBSERVER*.

It may be admitted that we have not devoted sufficient space to a full report of the numerous decisions in all the courts. Our excuse must be, that the improvements effected in the regular reports by their early publication, and the promptitude and accuracy of the *Law Journal* in its reports, appeared to render unnecessary another extensive series, and consequently our reports and notes of cases were confined to such as appeared more particularly useful to solicitors.

It seems, also, that, in this age of cheap literature and double sheets of all kinds of newspapers, the moderate size of the *LEGAL OBSERVER* did not suit the general taste. The advice we originally received from some of our respected supporters, to confine our labours within their original bounds, and render the work valuable for its brevity and condensation of useful matter, appears to have been better suited for the last than the present age. Quantity is now required as well as quality, and we cheerfully consent to merge our work in a publication better adapted to the requirements of the times.

Other circumstances may also have rendered it expedient to retire from the conflict. Amongst these it may be, the position of the Editor restrained that freedom of disquisition which appears to be demanded on the part of all great classes of the community. Most of our readers will comprehend the difficulties to which we refer, and appreciate the motives which have induced us willingly to resign an office that, for the good of the profession, may be more efficiently filled by others.

We beg, in taking leave, to return our hearty thanks, as well to our friendly correspondents, as to our regular or occasional contributors and reporters, who have lent their powerful aid during the whole progress of the work; and we owe our acknowledgments also for the support and encouragement which we have received from our subscribers. We have been accustomed to receive many valuable suggestions, of which we frequently availed ourselves; and it is no small gratification to remember that we have rarely encountered any objection, from our professional brethren, to the opinions we have expressed on pro-

fessional subjects, or the measures we have advocated, in the anxious endeavour to benefit our brethren, to whom we are so deeply indebted.

Our readers will observe by the prospectus of *THE SOLICITORS' JOURNAL AND REPORTER*, which we inserted last week, that the pages of that work will be especially devoted to the interests of solicitors, and that it will become the acknowledged organ of that branch of the profession.

## TESTIMONIAL TO THE SECRETARY OF THE INCORPORATED LAW SOCIETY.

At a Meeting of the Council of the Incorporated Law Society, held on Thursday, 12th June, 1856,

THE PRESIDENT reported to the Council that a fund had been raised, by subscription of the members of the society, with the object of presenting to Mr. MAUGHAM a memorial of their respect and esteem, and an acknowledgment of the valuable services which,—with ability and with untiring zeal, and with unblemished honour,—he has rendered to the Society, as the Secretary, since its formation, in 1825; that upwards of £600 had been contributed; and that it was proposed to devote 100 guineas to the purchase of a piece of plate, with an appropriate inscription, and to apply the remainder of the fund for the permanent benefit of Mr. MAUGHAM; and

IT WAS thereupon unanimously RESOLVED:

That the Council gladly avail themselves of this opportunity to record the high sense which they entertain of the ability, activity, and zeal with which the Secretary has discharged the varied and laborious duties of his office, during the whole period of the existence of the Society, and their sincere and cordial respect for his character.

IT WAS also RESOLVED unanimously:

That a copy of these resolutions be transcribed and framed, and be presented to Mr. MAUGHAM.

The following is the inscription on the silver salver:—

PRESENTED TO

ROBERT MAUGHAM, ESQ.,

By the COUNCIL and MEMBERS of the Incorporated Law Society in testimony of the high sense they entertain of his invaluable services as

*Secretary to the Society*

*For upwards of Thirty Years,*

And in the belief that his ability, integrity, and unwearied exertions have tended to promote the

present efficient state of the society. Upwards of six hundred pounds have been subscribed

## BY MEMBERS OF THE SOCIETY

For the purpose of a Testimonial,

Part of which has been applied in the purchase of this Piece of Plate.

KEITH BARNES, *President.*

EDWARD WHITE, *Vice-President.*

May, 1856.

The Secretary returned his grateful acknowledgments to the Council and Members of the Society for this most gratifying compliment, the highest that could be bestowed upon him, by Gentlemen so eminently competent as they were to judge of the value of any services he might have rendered. It was, indeed, from the Members of the Council (themselves among the ablest of the profession) that he had received a long course of instruction in the duties of his office, and to them he was principally indebted for any measure of success he had attained. He always felt it a high honour to be engaged in carrying the resolutions of the Council into effect and aiding their exertions in behalf of the Society and the Profession at large. He could claim only the humble merit of a constant and anxious desire to discharge his various official duties in the business of the society, the examination and registration; to be always at his post; and ready to render any service or assistance to the Members. He hoped to be able by future exertions to secure the continuance of the favourable opinion so kindly expressed towards him.

## PROPOSED CONCENTRATION OF THE COURTS OF LAW AND EQUITY.

A DEPUTATION from the council of the Incorporated Law Society waited upon Sir Benjamin Hall, Chief Commissioner of Public Works, at his offices, Whitehall-place on the 18th instant, relative to the removal of the courts of law from Westminster, and the erection of a building in the neighbourhood of the inns of court, in which all the courts, both of law and equity, and all the law offices, might be congregated under one roof.

Mr. White, president of the society, in explaining the object of the deputation, called the attention of the Chief Commissioner to the inconvenience arising not only to gentlemen of the bar and solicitors, but also to the public, from the circumstance that the courts and legal offices were scattered about the metropolis. The Lord Chancellor, the Lords Justices, and the Vice-Chancellors at present sat at Lincoln's-Inn, in temporary courts, totally void of accommodation for either solicitors or suitors.

The common law judges sit in the courts attached to Westminster-hall, which are all small and inconvenient in accommodation for the judges and the

bar, and have no accommodation for either the attorneys or the public. The court used by the Queen's Bench judges when sitting in *Nisi Prius*, was also small and inconvenient, and had no rooms for jurors or witnesses. The Common Pleas, equally with the Exchequer, was without any appropriated room in which to try *Nisi Prius* cases. The Court of Error and the Court of Criminal Appeal had to sit in any court that might be vacant about Westminster-hall. The Insolvent Debtors' Court was in Portugal-street, and the Court of Probate in Doctors-Commons. So far for the courts. The law Offices were still more scattered, being dispersed over the Temple, Chancery-lane, Rolls-yard and Gardens, Southampton-buildings, Staple-inn, Lincoln's-inn, Lincoln's-inn-fields, Quality-Court, Serle-street, Portugal-street, Bell-yard, Lancaster-place, Duke-street, Westminster, Sergeant's-inn, and Red Lion-Square.

The profession was desirous to have this inconvenience remedied, and would suggest to her Majesty's Government the propriety of purchasing a site for the erection of a building in which all these courts and offices might be brought together; and looking to the Inns of court, and the districts in which gentlemen connected with the several branches of the legal profession resided, they considered that the most eligible site would be that bounded between north and south by Carey-street and the Strand, and on the east and west by numerous small courts and alleys, being in front 800 feet, and in depth 480 feet. A building so situated would not only have the merit of being central, but would present a frontage in the main thoroughfare of the metropolis to Temple-bar, and improve the neighbourhood, by displacing the low haunts of crime which occupy at present the area in question; and, simultaneously with the improvement which they suggested being carried out, two new streets, parallel to each other, might be opened from the Strand to Holborn, to relieve the traffic through Chancery-lane.

Mr. *Barnes*, a member of the deputation, remarked that since 1820 the judicial business had been greatly increased, there being now fifteen instead of twelve common law judges, while the number of the equity judges had been more than trebled, and yet no alterations had been made to accommodate the increase, with the exception of wooden huts originally put up in Palace-yard, to serve as courts to the Vice-Chancellors, and the temporary buildings which they at present occupied in Old-square, Lincoln's-inn.

Mr. *White* further remarked that a great deal of business in the administration of the law was carried on in private houses, or chambers, for which Government had to pay rent, and he thought there could be no doubt that such a practice was highly objectionable and full of risk.

Sir *B. Hall*.—I am, then, gentlemen, to understand that it is your opinion that the courts of law in their present state are inconvenient and wholly insufficient to the requirements of the legal business of the country, and that even if it were contemplated to effect improvements in the courts in their present locality, the site would still be objectionable, however complete the offices might be in themselves. Under these circumstances you desire that there should be a new site chosen for the erection of a suitable building; that it should be some spot in a central position, and that the one you would suggest is that lying between Pickett-place, the Strand, Temple-bar, and Carey-street.

There can be no doubt that the courts at West-

minster are very inconvenient, and that great alterations must be made in them if they are to be continue there. If, however, the profession is of opinion that they ought to be removed, I think it would be better that the representation to that effect should come to her Majesty's Government from the proper representatives of the profession, who are undoubtedly the judges of the land; and I can assure you that if they make any such representation to me I shall lose no time in laying it before Government, and it shall be considered without delay. With the proposition, however, there should come a statement of how the funds are to be obtained, the sum that would be required, and what might be the objections to taking it from the suitors fund.

Mr. *Barnes* observed that the newspapers each morning recorded the complaints made by the judges that the courts were unfit for the purpose for which they were intended; that they were unwholesome and unhealthy.

A committee of the House of Commons had already sat upon the subject, and collected a vast mass of evidence, the greater portion of which was no doubt in favour of the proposition for consolidating the courts.

Mr. *White* confirmed this statement, and added that the deputation desired Sir Benjamin, on the part of the Government, to move for a select committee to inquire and report whether, having due regard to the rights and interests of the suitors in the court of Chancery, any and what funds, in the name of the Accountant-General of the court, may be applied towards the purchase of a site and the erection of the necessary buildings.

Sir *Benjamin Hall*.—If that be the case, I should remind you that my duty is to see whatever works Government may order carried out, and therefore that the motion for the committee should come from the Attorney-General as principal law officer of the Crown.

Mr. *White* then explained that, should the committee be appointed, it would be proposed to them to recommend that the money required for the purchase of the site, and the erection of the building, should be taken from the funds which have accrued from the surplus interest and accumulation of interest on the unemployed cash balances in the hands of the Accountant-General, and that Government should make good the interest on the sum which might be so absorbed in paying an equivalent rent for the premises. That would be tantamount to a change of investment, and there were many precedents to justify it.

Mr. *Lake* remarked that as the funds in question had accumulated in such a manner as that they could not justly be claimed by anybody, the Government might fairly apply it to this purpose, and so not only save the rent they were at present paying for chambers in Chancery-lane and elsewhere, but might also have the new courts rent free.

Sir *B. Hall* observed that if Government used the money it would be but fair for them to pay a rent equal to the interest of it, and closed the conference by again advising the gentlemen composing the deputation to put themselves in communication with the Attorney-General.

The deputation having thanked the right hon. gentleman for his courtesy, then withdrew.

## THE LATE MASTER GOODRICH.

During the progress of a cause in the Court of Queen's Bench on the 17th instant, Lord Campbell stated he had just received the intelligence of the sudden death of a most meritorious officer, Mr. Goodrich, one of the Masters of the Court, who had most honourably and faithfully served the public for upwards of forty years.

Mr. T. Jones said, that the junior bar who were in the habit of attending before Mr. Goodrich, would deeply deplore his loss.

Lord Campbell.—He was devoted to the discharge of his duties, which he performed most ably and most faithfully. I am sure all the members of the Bar will join with the judges in bearing this testimony to his merits.

The late Master was born of respectable parents in Gloucestershire, in the year 1779. When about twenty-one he became clerk to the late Mr. Bell of Gray's-inn (firm afterwards Bell and Bromley). In about three or four years he became managing and confidential clerk, and had the entire conduct of the office until he left such employment. Mr. Bell many times wished to give him his articles, and promised him a partnership; but Mr. Bell being the town attorney of the late Earl Grey, and the Earl having promised Mr. Goodrich a public appointment, Mr. Goodrich declined Mr. Bell's proffered kindness. In 1815, the late Mr. Thomas Le Blanc, the then Master of the Court of Queen's Bench, selected him from the attorneys and clerks attending before him, as best qualified to fill the office of Assistant-Master, which office he continued to fill until the 1st of January, 1838, when the offices were consolidated, and he was appointed by statute one of the Masters, an office which he filled with credit to himself and satisfaction to the public until the hour of his death, and thus verifying Lord Campbell's remarks, in his "Lives of the Lord Chief Justices of England," "that there is no office, however great, that a man may not attain by integrity, perseverance, and honest industry." Mr. Goodrich, for goodness of heart, kindness of disposition, and urbanity of manner, was never exceeded by any man in any position of life. His reports to the court and judges were a model of conciseness and clearness of language. In his private life he was a most generous and benevolent man

## BARRISTERS CALLED.

### LINCOLN'S-INN.

April 30, 1856.

Thomas Key, Esq.  
Frederick Thomas Curtis, Esq.  
John William Chitty, Esq.  
John George Smith, Esq.  
Christopher Cheevers M'Donnell, Esq.  
Cholmeley Austen Leigh, Esq.  
John William Church, Esq.  
Reginald John Cust, Esq.  
Bruce Lockhart Burnside, Esq.  
William Edward Baker, Esq.  
John Gwyn Jeffreys, Esq.  
Samuel Edgar Sloper, Esq.

June 6, 1856.

Wells Butler, Esq.  
Edward Poste, Esq.  
Francis Henry Bacon, Esq.  
Athenstane Willcock, Esq.  
Edward Pardoe Cotton Hanson, Esq.  
Henry Walthall Walthall, Esq.  
Robert Stuart, Esq.  
Spencer Perceval Butler, Esq.  
Russell Duckworth, Esq.  
Benjamin Bickley Rogers, Esq.

November 17, 1856.

Thomas Dunbar Ingram, Esq.  
Theodore Henry Dickens, Esq.  
John Onslow Watts, Esq.  
Robert Willan, Esq.  
William Bayne Ranken, Esq.  
John Jackson Smale, Esq.  
John Robert Collier, Esq.  
Sidney Biddle, Esq.  
Henry Pace, Esq.  
Brownlow Poulter, Esq.  
Joseph Howard, Esq.  
George Murray, Esq.

### INNER TEMPLE.

April 30, 1856.

William Emmerson Laslett, Esq.  
Edward Headlam, Esq., M.A.  
Robert Harcourt Chambers, Esq., B.A.  
Henry Smith, Esq.  
George John Shaw Lefevre, Esq., B.A.  
John Walker, Esq., B.A.  
James Edwin Cole, Esq.  
Ford North, Esq., B.A.  
George Wells, Esq., B.A.  
Henry Casson, Esq., B.A.  
Robert Baron Templar, Esq., B.A.

June, 1856.

John Wood, Esq., B.A.  
Charles Ashbrook Wright Crump, Esq., B.A.  
William Stevenson Owen, Esq.  
Herbert Crompton Herries, Esq., M.A.  
William Markby, Esq., B.A.  
Richard Hoper, Esq.

November 17, 1856.

Wm. Fothergill Robinson the younger, Esq., B.A.  
William James Carver, Esq., B.A.  
Thomas Blackburn Baines, Esq., B.A.  
Charles Lamb Kenney, Esq.  
Henry Brinsley Sheridan, Esq.  
Arthur Scratchley, Esq.  
Francis Raymond Eugene Bazire, Esq.  
Henry Gover, Esq., LL.B.  
Richard Meade King, Jun. Esq., B.A.  
William Owen Brigstocke, Esq., B.A.  
Daniel Cullimore, Esq.

### MIDDLE TEMPLE.

April 30, 1856.

James Prendergast, Esq.  
William Frederick Ward, Esq.  
Samuel McCulloch, Esq.



George Greenway Little, Esq.  
George Collier, Esq.

June, 1856.

William Lambert Dobson, Esq.  
Henry Bull Templer Strangways, Esq.  
Edward Yardley, Esq.  
John Haddy, Esq.  
Edmund James, Esq., B.A.  
John Metcalfe, Esq.  
Leonidas Gantier, Esq.

November, 1856.

John Philip Green, Esq., LL.B.  
Henry Fulcher Brunet, Esq.  
James Carlile McCowan, Esq.  
Frederic Seebohm, Esq.  
George Trafford, Esq.  
John Patrick Murphy, Esq.  
Charles Cromwell Hockley, Esq. (Conveyancer.)

GRAY'S INN.

June 6, 1856.

Adolphus John D'Allain, Esq.  
Henry Nicol, Esq.  
Clement Dale, Esq.

November 17, 1856.

Philip James Wingfield, Esq.  
Thomas Dudley Ryder, Esq., M.A.  
Thomas Ridley, Esq.

[Including those called in Hilary Term, the total number of calls in the present year, is 124.]

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries Act, with dates when Gazetted.*

Capes, George, Gray's Inn, in and for the City of London; also in and for the City and Liberties of Westminster; and also in and for the county of Middlesex.—9th December.  
Piamana, Robert May, Newton Abbott, in and for the county of Devon.  
Peard, George, Barnstaple, in and for the county of Devon.—16th Dec.

### COUNTY COMMISSIONERS.

*To Administer Oaths in Chancery. Appointed under the 16 & 17 Vic. c. 78, with dates when Gazetted.*

Clarke, William, Leeds.—Nov. 28.

Herring, George Anthony, Bedale, Yorkshire.  
Smith, John Bridgeman, Hamilton.—22nd Dec.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From November 24th to December 18th, 1856, both inclusive, with dates when gazetted.*

Rowland, William, and William Henry Rowland, Rapsbury and Hungerford, attorneys and solicitors.—Nov. 28.  
Whides, Henry Atkinson, and Edric Adolphus Julius, Maidstone, attorneys and solicitors. December 5.

## NOTES OF THE WEEK.

### THE NEW RECORDER OF LONDON.

*Russell Gurney, Esq., Q.C.,* has been elected Recorder of London, in the room of the Right Hon. James Archibald Stuart Wortley, M.P., appointed Solicitor-General. Mr. Gurney was called to the Bar by the Honourable Society of the Inner Temple on the 21st November, 1828. He held the office of Common Serjeant up to the time of his appointment to the Recordership. The Corporation of London has for many years selected for the important office of Recorder some member of the Bar of distinguished rank. In the present instance the election has fallen upon the son of one of the former judges of the Superior Courts, the Hon. Mr. Baron Gurney.

### EXCHEQUER CHAMBER.

At the Sittings in Error, on the 26th November last, Mr. Justice Coleridge said—"It will be desirable for the future, that in cases where the arguments and judgments in the Courts below are reported, that the judges of this Court should be furnished with the names of the books in which the reports appear."

### SOLICITORS ELECTED AS MAYORS.

Chichester: Mr. Edward W. Johnson (re-elected).  
Ruthin: Mr. Joseph Peers.

### LAW APPOINTMENTS.

The Queen has been pleased to appoint *Henry James Ross, Esq.*, to be Attorney-General for the Island of Grenada; and *Kenrick W. Collett, Esq.*, to be her Majesty's Advocate for the colony of Sierra Leone.—From the *London Gazette* of December 22.

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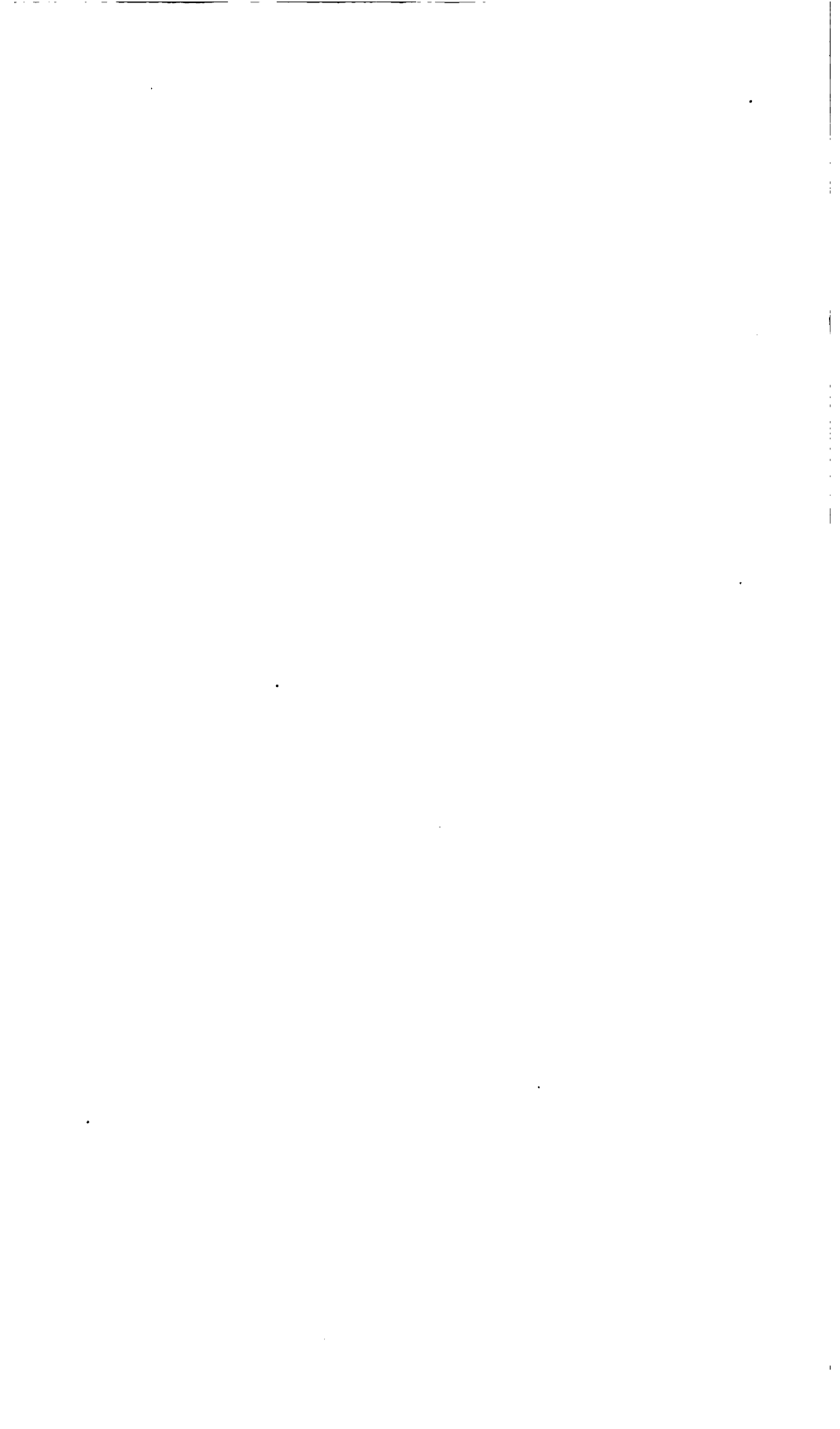
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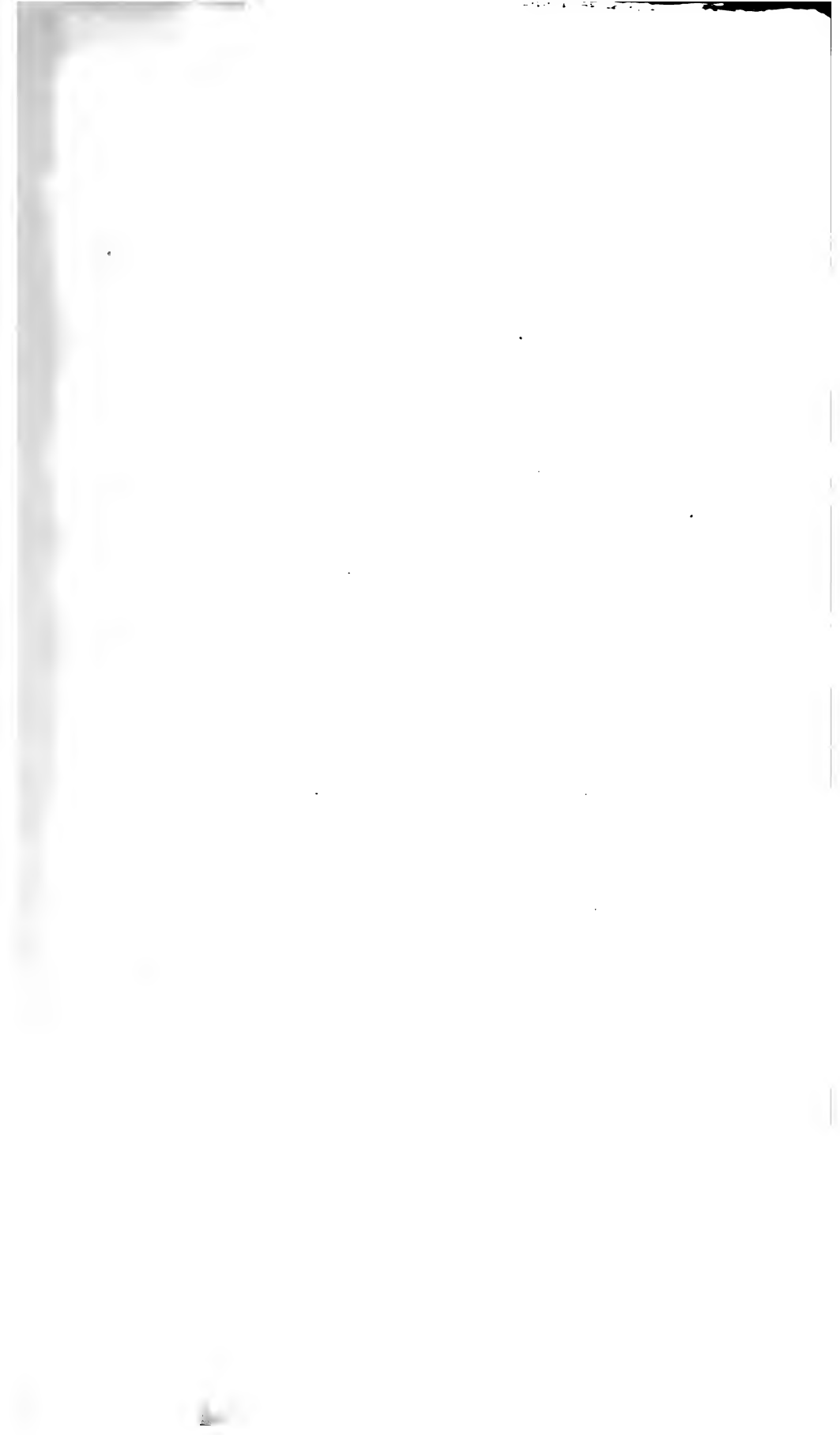
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